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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MAR 11 2002

KENNETH J. MURPHY, Clerk
DAPTON, OHIO

FERNANDO B. BACH,

Plaintiff,

vs.

CASE NO.: C 3 01-191

FIRST UNION NATIONAL BANK, Judge Dlott
et al.,

Defendants.

Deposition of FERNANDO DURAND, taken on
behalf of the Plaintiff, pursuant to Notice of Taking
Deposition in the above-entitled action, on January 9,
2002, at 2:10 p.m., at 7960 Arlington Expressway, 4th
Floor, Jacksonville, Florida, before Terrie L. Cook,
RPR, CRR, CSR (GA), Notary Public in and for the State
of Florida at Large.

APPEARANCES:

MICHAEL C. ECKERT, Esquire, Attorney for
Plaintiff, via telephone.

JOHN C. DEAL, Esquire, Attorney for Defendants,
via telephone.

Deposition used/Trial: 12/8/03

Deposition used/Hearing: _____

Depo for Dispositive Mtns: 12/16/03 MST

I N D E X

WITNESS

FERNANDO DURAND

DIRECT EXAMINATION BY MR. ECKERT..... 4

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FOR IDENTIFICATION

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S T I P U L A T I O N

It was stipulated and agreed by and between counsel for the respective parties, and the witness, that the reading and signing of the deposition by the witness not be waived.

- - -

FERNANDO DURAND,
having been produced and first duly sworn as a witness,
testified as follows:

DIRECT EXAMINATION

BY MR. ECKERT:

Q Could you please state your full name for the record, please?

A Fernando Durand.

Q And do you have any trouble hearing me today?

A I hear you fine.

Q Okay. Great. What is your current occupation?

A Current occupation is recovery coordinator for First Union National Bank.

Q Okay. And are you an attorney?

A No, sir.

Q Okay. Do you have any legal training?

A Only to the extent of, you know, whatever I've picked up on the job.

1 Q Okay. You understand I represent Dorothy
2 Bach?

3 A Correct.

4 Q Okay. Who is a resident of Ohio?

5 A Correct.

6 Q And that this testimony is in the case with --
7 that she has filed against First Union?

8 A Correct.

9 Q Okay. If you have any questions during the
10 deposition, please stop me, let me know and I'll try to
11 -- I'll try to answer the best I can. If you need to
12 take a break at any time, please just say so and -- and
13 I'll accommodate you. If you don't tell me that --
14 that my question is unclear or you don't tell me that
15 you didn't understand my question, I'm going to assume
16 that you did; is that fair?

17 A Yes, it is.

18 Q Okay. Do you have some exhibits in front of
19 you or documents in front of you that I have forwarded
20 down to your office?

21 A Yes, I do.

22 Q Okay. And do you also have some documents
23 that Mr. Deal forwarded to you?

24 A Yes. From Mr. Deal, I have 238 through 514, I
25 believe.

1 Q Okay. Let's -- let's start with documents
2 numbered 1 through 237. Do you have those?

3 A I have them in front of me, yes.

4 Q Okay. Have you seen those documents before?

5 A Yes.

6 Q Okay. And can you just briefly tell me what
7 those documents generally consist of?

8 A I see credit card statements, that would be
9 document 2 through 13.

10 Q Okay. Let me -- let me stop and maybe we can
11 do this a little bit quicker.

12 A Sure.

13 Q In your review of these documents, are there
14 any of these documents that aren't authentic copies of
15 documents maintained by First Union?

16 A No, sir, all of these documents are First
17 Union documents.

18 Q Okay. And is that also true for documents 238
19 through 514?

20 A That is correct, sir.

21 Q Okay. And is that also true for documents 515
22 through 590?

23 A That is correct.

24 Q Okay. And to the best of your knowledge, are
25 there any documents that have been assigned numbers

1 such as at the bottom of the right-hand corner beyond
2 Number 590?

3 A No. Looking at what I have here, the last
4 numbered document would be 590, sir.

5 Q Okay. Great. I want to start -- if we could,
6 let's start in the beginning of the document. And just
7 -- just for purposes of clarification, I'd like to --
8 I'd like to mark the first set as Exhibit -- Exhibit A,
9 that's numbers 1 through 230 -- 237.

10 A Okay. Okay. Do you want me to mark it?

11 Q You can or the court reporter can, whichever
12 is agreeable to her.

13 A Okay.

14 (Plaintiff's Exhibit A was marked for
15 identification.)

16 Q Okay. The first page, document number 1,
17 there's a category that says, Disputes. What -- what
18 does that category mean? It's in the middle of the --
19 in the middle of the page.

20 A Yes, I see it and I'm not familiar with the
21 population of that field.

22 Q Okay. Do you know who would be familiar with
23 that?

24 A To the best of my knowledge, I don't know of
25 anyone that -- that would.

1 Q Okay. This is a computer program that's used
2 by First Union?

3 A Correct. I do recognize this as a screen from
4 the old FDR system.

5 Q Okay. And is that system still -- still
6 working at First Union?

7 A It is -- I believe that some accounts are
8 currently housed on there.

9 Q Okay.

10 A But to what extent, I -- I don't know.

11 Q Okay. Well, at some point in time, it appears
12 that there's a checking account that was opened up and
13 I have the name of Dorothy Bach on it, would you --
14 would you agree with that?

15 A Correct.

16 Q Okay. Can you tell me how -- how Dorothy
17 Bach's name came to be on that account?

18 A I don't know how her name came to be on the
19 account, but I did look at the statements for that
20 particular checking account --

21 Q Right.

22 A -- and I do notice that her name was on that
23 account, I believe, beginning the April '99 -- April
24 1999 statement.

25 Q Okay. Why -- why don't we turn, if we

1 could -- and we'll mark the second set of documents,
2 numbers 238 through 514, as Exhibit B.

3 A Okay.

4 (Plaintiff's Exhibit B was marked for
5 identification.)

6 Q Document number 238, do you recognize that
7 document?

8 A It looks like it's a customer access
9 agreement.

10 Q Okay. And that would be for, like, an ATM
11 card?

12 A I believe that that's what it is for, yes.

13 Q Okay. Are there any applications that you
14 have to sign when you open up a checking account with
15 First Union?

16 A That is something that I'm, frankly, not --
17 not positive about.

18 Q Have you ever seen any applications to open
19 up a checking account with Dorothy Bach's signature on
20 it?

21 A I have not.

22 Q Okay. And at the bottom of number 238, there
23 appears to be a signature of Heidi N. Bake, do you see
24 that?

25 A Correct.

1 Q And a date of 3/10/99?

2 A Yes.

3 Q Okay. And then also the name and the address
4 is Heidi Bake?

5 A Yes.

6 Q Okay. If we could turn the page, document
7 number 239 is a statement for that checking account; is
8 it not?

9 A Yes, it is.

10 Q Okay. And at the top it lists Heidi N. Bake
11 and an address of Ocean Shore Boulevard, do you see
12 that?

13 A Yes, I do.

14 Q The statement is for 3/10/99 through 3/19/99?

15 A Yes.

16 Q Okay. And Dorothy Bach's name doesn't appear
17 anywhere on that statement, does it?

18 A That's correct, her name is not on the
19 statement.

20 Q Okay. Could we turn to the document 241?

21 A Okay.

22 Q This document at the top, it has both Heidi
23 Bake and Dorothy Bach's name on the account.

24 A Correct.

25 Q Okay. And that's for 3/20 through 4/21/99?

1 A Correct.

2 Q So at some point between 3/19/99 and 4/21/99,
3 Dorothy Bach got added to this checking account?

4 A That is a correct assumption.

5 Q Okay. Do you have any documents or does First
6 Union have any documents or any computer information
7 that would indicate how Dorothy Bach's name got added
8 to that checking account?

9 A None that I'm aware of.

10 Q Okay. Do you have any -- any knowledge as to
11 how her name got added to that checking account?

12 A No, sir.

13 Q Okay. What are the different ways that First
14 Union allows people to be added to a checking account?

15 A I am not -- am not positive what the branch
16 procedures are regarding that, sir.

17 Q Okay. Who would know that?

18 A I guess the branch personnel.

19 Q Okay. Do you know if there's any kind of a
20 document that a person has to sign to be placed on
21 someone's checking account?

22 A Not that I know of.

23 Q Are there any policies in place at First Union
24 to prevent people from being added to other people's
25 checking accounts without their consent?

1 A There may be policies, but I'm not aware if
2 there are or not.

3 Q Okay. Who would know that?

4 A Again, probably someone at the branch level, a
5 branch manager perhaps would be the best to address
6 that question.

7 Q Do you know what branch this checking account
8 was opened up at?

9 A I do not.

10 Q Is there any way to tell that?

11 A Not that I know of, sir.

12 Q Now, at some point in time First Union became
13 aware that my client was disputing that she had any
14 accounts with First Union, do you agree with that?

15 A That is correct.

16 Q Okay. When did First Union first receive
17 notice that my client said that she didn't open any
18 accounts with your -- with your bank?

19 A I'll have to look through the collection
20 notes.

21 Q Mr. Durand, the first note I see in the
22 collection notes would be on page -- actually document
23 number 31.

24 A Yeah. Actually, that's the exact one that --
25 that I found.

1 Q Okay.

2 A It seems to me that October 29th, 1999, there
3 was a communication where I spoke to Dorothy Bach.
4 Ms. Bach was asked if she wanted to do a fraud report,
5 she said she did not want to do anything on the account
6 until she looked at statements. Ms. Bach was asked if
7 she wanted to prosecute her granddaughter for using the
8 card and Ms. Bach said, No.

9 Q Where does it say she -- okay. So she said
10 no?

11 A Yeah. And then it says here, She insisted on
12 receiving statements of the account before anything was
13 done. It -- it appears to me that October 29th, 1999,
14 was the first communication we had with her regarding
15 that there was a problem.

16 Q Okay. Now, you -- you have had an opportunity
17 to see a letter that Ms. Bach claimed she sent on -- or
18 was faxed to First Union on October 22nd of 1999, have
19 you seen that document?

20 A Yes, I did see that letter, sir.

21 Q Okay. And First Union has denied that it ever
22 received that document?

23 A Correct.

24 Q Okay. Can you tell me how -- what prompted
25 the conversation on October 29th, 2001, that First

1 Union never received that letter?

2 A I note by looking at the memo type, FRD PRV
3 stands for fraud prevention --

4 Q All right.

5 A -- however, I do not know whether this was a
6 call that was initiated by First Union or by Ms. Bach.

7 Q Okay. But if -- assume for a second for
8 purposes of my next question that Ms. Bach did not
9 call First Union, what information did First Union have
10 to institute any kind of a fraud prevention
11 investigation?

12 MR. DEAL: Object to the form of the
13 question.

14 Q Okay. My understanding is you still have to
15 answer the question to the best of your ability,
16 although your counsel's made an objection for the
17 record.

18 MR. DEAL: Yes, go ahead and answer.

19 A Yeah. There -- there's previous notations,
20 sir, that are on the account that there were claims and
21 allegations of fraud. So I believe that the fraud
22 department had already been aware and may have even
23 been working this account as a fraud account.

24 Q Okay. Could you take a look through all the
25 other documents I provided to you? I'd like you to

1 find Ms. Bach's letter of October 22nd, 1999.

2 A Yes, I have it in front of me.

3 MR. ECKERT: Okay. Could we go ahead and mark
4 that as Exhibit 4? I know we haven't gotten a 3
5 yet, but --

6 MR. DEAL: Mike, I think -- didn't you give us
7 two copies of that letter?

8 MR. ECKERT: I don't believe so.

9 MR. DEAL: Oh, wait a minute. I have two
10 copies, one with handwriting on it at the bottom --

11 MR. ECKERT: Okay.

12 MR. DEAL: -- and one without. And there are
13 two different telephone numbers at the top of the
14 two copies. And these -- these are both -- and one
15 has things stapled to it, but these are both copies
16 that I got from you with your letter.

17 MR. ECKERT: Okay.

18 MR. DEAL: We need to specify which one you
19 want marked.

20 MR. ECKERT: Sure. The one I'm looking at is
21 -- it says, October 22nd, 1999, at the top. It
22 says, First Union National Bank. And then next to
23 it handwritten in is a phone number,
24 1-888-472-0535.

25 MR. DEAL: Okay. That's going to be Exhibit

1 4?

2 MR. ECKERT: That's going to be Exhibit 4.

3 MR. DEAL: Okay.

4 THE WITNESS: Okay. The previous two
5 exhibits, did we call those A and B or 1 and 2?

6 MR. ECKERT: I'm sorry, they should be A and B
7 and this would be D.

8 THE WITNESS: Okay. I just wanted to make
9 sure I wasn't going crazy because I had marked
10 those A and B.

11 (Plaintiff's Exhibit D was marked for
12 identification.)

13 BY MR. ECKERT:

14 Q Do you have it in front of you?

15 A I have the letter, yes.

16 Q Okay. Can you tell me if that 888-472-0535 is
17 a First Union facsimile number?

18 A I do not know that that is.

19 Q How would -- how would one go about
20 determining whether or not that's a number that First
21 Union uses?

22 A I guess -- I guess you could try sending a fax
23 to it.

24 Q Okay. Well, is there any other way? Is there
25 any kind of a directory?

1 A Perhaps. I -- I can find out.

2 Q Okay.

3 A There may be.

4 Q If you could do that and provide that
5 information to your attorney, that would be very
6 helpful.

7 A Okay.

8 Q Have you -- have you ever contacted anyone in
9 Charlotte, North Carolina, from First Union to find out
10 if they received a facsimile letter from Ms. Bach on
11 October 22nd, 1999?

12 A I have not contacted anyone from Charlotte,
13 North Carolina.

14 Q Okay. At what point in time after the 29th of
15 October of 1999 could First Union have removed or
16 instructed the credit bureaus to remove the adverse
17 information regarding Ms. Bach?

18 A By -- by looking at the collection history --

19 Q Uh-huh.

20 A -- I don't know that First Union would have
21 gone ahead and removed the derogatory information.

22 Q Okay. I didn't understand your answer to
23 that. I guess my --

24 A Okay.

25 Q -- my question is: At what point -- okay.

1 You're saying that First Union could have done
2 that?

3 A Well, what I'm saying is by looking at the
4 collection file --

5 Q Uh-huh.

6 A -- there was not enough adequate reason for us
7 to go ahead and take that action.

8 Q Okay. But that's based on -- on First Union
9 policy?

10 A Yes.

11 Q Okay. Now, if we could go through -- let's
12 start with the collection notes on document number
13 21.

14 A Okay.

15 Q This is what appears to be a follow-up from
16 when Heidi Bake was arrested; is that your
17 understanding?

18 A Yes. I also wanted to make a clarification
19 that this is not a collection note. It's a memo type,
20 FRD PRV, which, once again, is fraud prevention
21 department.

22 Q Okay. And we're looking at -- the date on
23 this thing is May 22nd, 1999?

24 A That's what the -- that's what the printout
25 says, yes.

1 Q Okay. Well, when it says added, is that the
2 date that it actually happens, that the event actually
3 happened or is that when it's entered into the
4 computer?

5 A To the best of my knowledge, that would be the
6 date it was entered into the computer.

7 Q Okay. By the way, it says -- what does FAL
8 mean?

9 A This is just an assumption because FAL, I do
10 not -- it's not something that is definite, but I think
11 that it might stand for fraud alert.

12 Q Okay.

13 A And, again, that's just an assumption. We'd
14 have to find someone from fraud that could confirm
15 that.

16 Q Okay. So if we operate under that assumption,
17 it says, Left fraud alert message for CH, what is CH?

18 A Card holder.

19 Q Card holder to call back. Please verify if
20 she is aware of this person and the use of the account
21 by her. May need to take a report. Can you tell me
22 what phone number was called and this message was left
23 at?

24 A I cannot, sir.

25 Q Okay. Can you tell me when the first date is

1 that First Union had knowledge that Ms. Bach's phone
2 number was in the 937 area code?

3 A I do believe I saw something in the notes.
4 Let me see if I can locate that for you. It appears to
5 me by looking at the notes work history that on October
6 29th, 1999, we were advised that card holder's true
7 home number was 937-866-5600.

8 Q Okay. So is it -- is it fair to say that
9 First Union has -- has no evidence that the card that
10 was made on -- or the call that was made on May 22nd,
11 1999, was made to a 937 area code number?

12 A Again, I -- I don't know what number was
13 called.

14 Q Okay. We have -- basically, we have Heidi
15 Bake being arrested and a card with Dorothy Bach's name
16 on it was in her possession, correct?

17 A Correct. That's what the notes indicate.

18 Q Okay. And then the police called First Union?

19 A The assumption is that the police department
20 contacted us. But, again, by looking at that
21 particular printout, there's no way for me to tell
22 whether it was an inbound or an outbound call.

23 Q Okay. Well, would First Union have had any
24 reason to call -- call the police department?

25 A No.

1 Q Now, the next page of document number 22 says,
2 Customer verified that her granddaughter did have her
3 card. Stated that she did give her permission, removed
4 BLK.CD is with police. She will pick it up. Now, I
5 want to ask you what does BLK.CD mean?

6 A That stands for block code.

7 Q Okay. Is that something First Union puts on
8 to prevent anybody from using the account?

9 A There's various block codes. And to be
10 honest, I'm not familiar exactly how they work, but it
11 was a way to designate an account as having a
12 particular status.

13 Q Okay. Anyway, it says --

14 A You --

15 Q Assuming that what this is saying is that the
16 card holder will pick it up, pick up the card at the
17 police department, do you see that?

18 A Yes.

19 Q Okay. And that's how you interpret that?

20 A Says, She will pick it up, you know. I guess
21 you could make the assumption that it is the card.

22 Q Okay. And then the next document I want to
23 talk about is number 24.

24 A Okay.

25 Q It says that -- basically, it looks like

1 Dorothy -- someone claiming to be Dorothy B. Bach
2 called First Union and requested a new card?

3 A That's what it appears to be, yes.

4 Q Okay. And this is -- this is all entered
5 into your computer system on May 22nd of 1999, correct?
6 All these transactions we've been talking about, from
7 the time the person got arrested, you know, with
8 document 21, until the person called in with a new
9 card.

10 A According -- according to the system, that's
11 the date that is showing.

12 Q Okay. So at least at this point in time,
13 First Union knew that there was a -- a potential
14 problem with the card, which is why they called the
15 person purported to be Dorothy Bach?

16 A Correct.

17 Q Okay. And then they were told that whoever
18 the person said that they were, Dorothy Bach said that
19 they would come down to the police station and get the
20 card?

21 A That can be assumed, yes.

22 Q Okay. And then on the exact same -- same day
23 that this is added into the computer system, First
24 Union is getting a request from someone purporting to
25 be Dorothy B. Bach for a brand new card?

1 A There is a request for a card, yes.

2 Q Did First Union take any -- any notice of the
3 fact that there was supposed to be a card picked up at
4 the police station and yet at the same time someone's
5 requesting a brand new card? Is there any alerts that
6 went off at First Union that maybe here's a problem?

7 A I don't know if there were alerts or not.
8 Again, this would have been a function of the fraud
9 department and I'm not aware of how they handle their
10 day-to-day business.

11 Q Okay. Well, you've done some investigation
12 since this case has been filed, I would assume?

13 A I've really mostly reviewed -- reviewed the
14 content matter that's available in the case.

15 Q Do you know if anyone ever went to the police
16 station and picked up that credit card?

17 A I don't know that.

18 Q Okay. You never checked on that?

19 A I personally did not, no.

20 Q Okay. Did this cause any -- any concern to
21 you, the fact that -- that the person purported to be
22 Dorothy Bach was supposed to go to the police station
23 and pick up a card, instead requested a new card?

24 A Again, it's something that -- that's --
25 fraud's handling and it's not something that I'm

1 related with, you know, on a day-to-day basis. It's
2 something that I certainly would not have done. At the
3 time that this occurred, it wasn't even in the recovery
4 department.

5 Q Okay. So -- so who, again, would I need to
6 talk to about -- about whether or not that was -- that
7 could have been a red flag?

8 A Again, I think that if we could locate someone
9 that worked in fraud prevention, that would be the most
10 expert witness.

11 Q Okay. Do you know who the operator with the
12 initials CV is?

13 A I do not have that -- I do not have that
14 listed here on the exhibit that you're showing me.

15 Q Okay. If it's on the other exhibit you gave
16 me, that's fine. It says also on document 25 that the
17 person was requesting 15 standard reorder access
18 checks?

19 A Correct.

20 Q Okay. And this also was placed in the -- in
21 your computer system on May 22nd of 1999?

22 A Correct.

23 Q And it says, Reason for request is bank error,
24 you see where it says that?

25 A Yes, I do see that entry there.

1 Q Okay. Is that something that the bank enters
2 or is it something that the customer informs the bank
3 of?

4 A I -- to be honest, I don't know what that
5 means. The reason for request, bank error, that's
6 something that, I think, was entered by the
7 representative that handled this call, but I have no
8 knowledge as to what it could mean.

9 Q Do you have any evidence or does First Union
10 have any evidence that you know of that Dorothy Bach
11 ever opened up any account with First Union?

12 A I -- we do not have an application on Dorothy
13 Bach.

14 Q Okay. Do you have any -- any phone records
15 from any calls to her in the 937 area code that would
16 indicate that -- that she opened an account with First
17 Union or used an account with First Union?

18 A Again, as far as calls being placed from the
19 bank, I cannot determine the numbers that these calls
20 were made to.

21 Q Okay. At the time after First Union contact
22 -- had a contact with Ms. -- Ms. Bach on October 29th
23 of 1999, did she at any point in time tell you or First
24 Union that she did, in fact, open an account with First
25 Union?

1 A No, she did not.

2 Q And, in fact, her position has always been
3 that she did not open any accounts with First Union;
4 isn't that correct?

5 A Correct.

6 Q Will you take a look at document number 28?

7 A Yes.

8 Q Okay. Can you tell me what that flag DDA
9 10/14/99 means?

10 A I do not know what that means.

11 Q Okay. And who would I talk to to find out
12 what that means?

13 A That would have been a note that was entered
14 by someone in collections Miami.

15 Q Okay.

16 A It would have to be someone that worked in
17 that department.

18 Q Do you know the names of any of the people
19 that worked down there?

20 A That department is no longer in existence,
21 sir. It shut down operations.

22 Q All right. What about document number 29?
23 And it says 10/14/99 and then 2841, do you know what
24 that means?

25 A No, I do not.

1 Q What about document 30, the entry that's on
2 that?

3 A Yes, I see the entry and I do not know what
4 that means.

5 Q Does that have anything to do with -- with
6 possibly Ms. Bach's letter of October 22nd?

7 MR. ECKERT: Objection, asked and answered.

8 A I don't think it has anything to do with the
9 letter. If anything, if I had to make an assumption,
10 it has to do with the credit line, 24,500. And, again,
11 I'm -- I'm assuming that that's what that entry is
12 about.

13 Q Okay. Do you have any -- any documentation
14 supporting what you said earlier about the fraud
15 department was still working on this -- this account on
16 10/29 of '99?

17 A The only documentation that I have is the --
18 the system notations that clearly indicated that the
19 memo typed was from FRD PRV, which is the fraud
20 prevention department.

21 Q Okay. And that's the one -- we're talking
22 about document number 31?

23 A Correct.

24 Q Now, do you have -- does First Union have some
25 sort of an agreement with their card holders that the

1 card holders will cooperate with First Union in
2 prosecuting fraud?

3 A I'm not aware if that's in the card holder
4 agreement or not.

5 Q Okay. Was it ever represented to Ms. --
6 Ms. Bach that that was, in fact, a requirement of the
7 card holder?

8 A I have no knowledge of that.

9 Q Now, during the course of dealing with
10 Ms. Bach's allegations that the accounts were not hers,
11 was she treated as a card holder or was she treated as
12 someone who never opened an account with First Union?

13 A I'm not really -- I'm not really sure how she
14 would have been perceived from the fraud prevention or
15 the collections area.

16 Q Okay. Is there -- is there any documentation
17 that -- that would tell us either way which way she was
18 -- which way she was treated?

19 A Other than just the collection notes, you
20 know, obviously, there's indications there that she
21 refused to prosecute the granddaughter. And as a
22 result of not prosecuting the granddaughter, the
23 collection activity continued on the account.

24 Q Okay. What -- what money did the
25 granddaughter take from -- from Ms. Bach?

1 A What do you mean "what money"?

2 Q Well, I guess my question is -- well, let me
3 start with this. Why didn't First Union prosecute the
4 granddaughter?

5 A I believe that in order to prosecute the
6 granddaughter and have a better case, First Union would
7 have needed at least, at a minimum, a fraud affidavit
8 from Ms. Bach. And then at that point in time, First
9 Union would have been relieved and know there was no
10 collusion. And at that point in time, then I'm
11 assuming the fraud department would have done whatever
12 they would normally do in the sense of evaluating
13 whether they would pursue Heidi Bake.

14 Q Okay. And -- and I guess my question -- the
15 last part of your answer, I think, dealt with whether
16 or not the bank would go after her civilly; is that --
17 is that true?

18 A Are you referring to Heidi Bake?

19 Q Yes.

20 A I believe that the fraud department would
21 actually pursue these accounts criminally.

22 Q Okay.

23 A Yeah.

24 Q And what -- you have a notification from
25 Ms. Bach on 10/29 that the accounts weren't hers,

1 correct?

2 A She did state that -- yeah, she did state that
3 -- that they were -- that the accounts were not hers,
4 yes.

5 Q And throughout the next couple of months, she
6 had reported that these accounts were -- were not hers
7 also to your corrections department?

8 A Correct.

9 Q And in February of that same -- of 2000, you
10 received a letter from my office unequivocally stating
11 that these accounts were not Ms. Bach's and that she
12 did not use them?

13 A Correct.

14 Q Was First Union's position that that was not
15 enough evidence to be able to submit that to a -- to a
16 criminal prosecutor?

17 A I believe it's First Union's position that in
18 order for us to even evaluate an account as it being
19 fraud, the first requirement is that the card holder
20 must complete a fraud affidavit and must be willing and
21 prepared to assist us in prosecuting the perpetrator of
22 the fraud. And to the best of my knowledge, and
23 according to the collection records, Ms. Bach was not
24 -- was not cooperative in those respects.

25 Q And -- and you said that -- that the card

1 holder was required to fill out this affidavit,
2 correct?

3 A Correct.

4 Q Okay. Was Ms. Bach ever a card holder at
5 First Union?

6 A The account was set up as her being a card
7 holder because the information that was used to open
8 the account was her information.

9 Q First Union pulled a credit report on Ms. Bach
10 when the credit card was opened, correct?

11 A I'm assuming they would. Again, that's a
12 different department. That would have been the front
13 end origination. And I have no record as to whether
14 that was done or not, but the assumption is, yes.

15 Q Okay. Well, because First Union issued a
16 credit card for about, what, a limit of \$24,500?

17 A Correct.

18 Q So you would assume that the credit report was
19 pulled?

20 A Yes.

21 Q At what point in time did First Union conclude
22 that Ms. Bach did not open the credit card account?

23 A Well, again, I think that First Union was
24 alerted that there was a potential situation back on
25 May 22nd of '99 when we were contacted by the Ormond

1 Beach Police Department. And then, again, October
2 29th, '99, when we spoke to Ms. Bach and she -- and she
3 stated that, you know, that it wasn't her account. But
4 at that time we had asked her if she wanted to do a
5 fraud report and she said that she didn't want to do
6 anything on the account until she got the statements.
7 At that time she was asked if she wanted to prosecute
8 her granddaughter for using the card and she flatly
9 said, no.

10 Q Okay. And does -- does Ms. Bach have any
11 contractual relationship that you know of with First
12 Union?

13 A No. Only to the extent that her information
14 was used to secure the credit card.

15 Q Okay. But you haven't -- you have no
16 information to prove that she was the one that -- that
17 opened the account or authorized someone to open the
18 account?

19 A Correct.

20 Q Okay. So -- and that's been true since, at
21 the very latest, 10/29 of 1999?

22 A That is the point in time that we were advised
23 that she believed that there was fraud in the account.

24 Q Now, does that trigger some sort of an
25 investigation at First Union?

1 A Well, we -- we know that the account was
2 worked by the fraud department.

3 Q Uh-huh.

4 A To what extent, what work was there and what
5 investigations were made, I -- I have no knowledge.
6 Again, that would have to be someone in the fraud
7 prevention that would be able to speak as to what goes
8 into their fraud investigation.

9 Q Okay. So anything dealing with fraud
10 investigation, you don't have any knowledge on that you
11 can share with us?

12 A Correct, sir.

13 Q Okay. Can you tell me why First Union
14 continued to report this information about Ms. Bach
15 after 10/29 of '99 when there was a dispute as far as
16 who opened the account?

17 A The reason why it would have continued
18 reporting, again, would have been because of Ms. Bach's
19 lack of cooperation in resolving this matter once and
20 for all by, you know, providing information, executing
21 an affidavit of fraud. It just simply -- the things
22 that needed to be in place for us to go ahead and
23 remove her from the account were not done. And since
24 they were not done, I believe there's even a notation
25 in the collection history that clearly indicates that

1 at one point in time that fraud said that they were no
2 longer handling the account. And the way that it would
3 work is that if fraud made a determination that an
4 account was not true fraud because of a domestic case,
5 then that account would be kicked back to collections
6 and it would continue in the collection cycle.

7 Q Okay. So is it fair to say that on October
8 29th when Ms. Bach informed First Union that -- that
9 she did not open the account, nor did she authorize
10 someone to open the account in her name, nor did
11 she use the account that First Union did not believe
12 her?

13 A I don't think that we didn't believe her, but
14 I think that her reluctance to prosecute the
15 granddaughter and her reluctance to fulfill the
16 necessary requirements that were needed to conclude the
17 matter as a fraud case prevented us from handling it as
18 a fraud case.

19 Q Well, whoever was posing as Ms. Bach stole
20 money from First Union, would you agree with that?

21 MR. DEAL: Objection to the form of the
22 question.

23 A I don't know that it would be stealing, but
24 certainly it was a manipulation through fraud. And we
25 certainly did suffer a loss because of that fraudulent

1 activity.

2 Q Okay. Now, there were numerous calls made to
3 Ms. Bach during, I guess it would be November and
4 December of 1999 and January of 2000, would you agree?

5 A Yes, there were -- there were several
6 collection calls.

7 Q Now, on the document that you've given to me,
8 is there anything that indicates the time of day in
9 which the -- the telephone call was made?

10 A Yes, sir. If you take a look at the field,
11 the third field under added in the center of the
12 page --

13 Q Right.

14 A -- that time would be the time that the call
15 was placed.

16 Q Okay. Well, I thought -- I thought what you
17 told me earlier, that's what time the -- that that was
18 entered into the computer, not necessarily what time
19 something occurred?

20 A Yes, that is the time that it's entered into
21 the computer.

22 Q Okay. So it's not necessarily the time of the
23 call?

24 A Not necessarily. But from the collections
25 end, to the best of my recollection, most of these

1 calls would have been done on a power dialer. And in
2 order to move on to the next account in a power dialer
3 you'd have to enter a notation, so I'm pretty confident
4 that -- that those times would be very, very close to
5 the time that the actual call took place.

6 Q Okay. Could we look at document 42?

7 A Yes, I see it.

8 Q Okay. It says -- it looks like there's a
9 conversation that occurred?

10 A Yes.

11 Q Okay. And under the added field for time,
12 it's -- it looks like, what, 8:00?

13 A Yes, that would be, I believe, 8:10; is that
14 correct?

15 Q Then last used is the exact same time, do you
16 see that?

17 A No. No. Where are you -- where are you
18 seeing that?

19 Q The field that says last used.

20 A Okay. Yes.

21 Q That's the exact same time?

22 A Yes.

23 Q Okay. So this added and last used has nothing
24 to do with the duration of the call?

25 A I -- I do not know. I do not know what that

1 last used exactly means.

2 Q If you could go to document 55, please.

3 A Okay.

4 Q This is dated January 20th of 2000?

5 A Yes.

6 Q Okay. It says, CBI shows different address.

7 1602 Thunderbird Lane, Dayton, Ohio 45449. It has a --

8 it has a 937 prefix there. What does CBI mean?

9 A I believe that that would have been credit
10 bureau investigation.

11 Q Okay. So this is First Union's pulling a
12 credit report on Ms. Bach?

13 A Yes. The assumption is that someone in
14 collections Miami had pulled a credit report in efforts
15 to skip trace or normal course of collection activity
16 and obtained this information.

17 Q What authorization did Ms. Bach ever give
18 First Union to pull her credit report?

19 A I'm not sure if that's included in the card
20 member agreement or not. It may be.

21 Q Okay. But if she never signed the card holder
22 agreement, what other authorization did Ms. Bach -- or
23 what authorization did Ms. Bach ever give to First
24 Union to pull her credit report?

25 A Ms. Bach would not have given us

1 authorization. However, we would have pulled this in
2 the course of our normal business duty.

3 Q Okay. And, in fact, you pulled this credit
4 report after she advised First Union that the account
5 was not hers; isn't that true?

6 A It was pulled after she advised us that --
7 that she felt there was fraud on the account.

8 Q Well, after she advised you -- First Union
9 that she never opened the account?

10 A Correct.

11 Q Okay. And if we go to document 57.

12 A Uh-huh.

13 Q It says, Possible fraud account. What -- what
14 is the purpose of -- of making that notation?

15 A That's just a notation that would have been
16 entered there by a collector.

17 Q Okay. And so at that point in time it would
18 have been First Union's position that this was a
19 possible fraud account?

20 A I believe that it's been the position of First
21 Union going back to 5/99 that there was a possible
22 fraud on the account. I mean, obviously, there's notes
23 previous to this -- that indicate that fraud prevention
24 has been involved and that, you know, there was a call
25 from the Ormond Police Department. I don't think this

1 was the first realization of such.

2 Q Okay. But at least January 20th of 2000,
3 First Union, basically, what you just said, they had
4 the belief that this was a possible fraud account?

5 A Correct.

6 Q And First Union is still knowingly reporting
7 information about Ms. Bach to the credit bureaus in
8 January of 2000?

9 A Correct.

10 Q And that -- that information that First Union
11 is reporting to the credit bureaus is adverse
12 information?

13 A It would have been delinquency information as
14 the account progressed in delinquency, yes.

15 Q Okay. Does delinquent information ever help
16 somebody's credit score?

17 A No.

18 Q And can you tell me, what is your
19 understanding of what is the purpose of the credit
20 bureaus? What -- what's their purpose?

21 A What is their purpose?

22 Q Uh-huh.

23 MR. DEAL: Objection to the form of the
24 question.

25 A They compile information on consumers relative

1 to their payment history and financial history.

2 Q And -- and you agree with me the primary
3 purpose of -- of a credit bureau is to allow lenders to
4 access information so that they can make informed
5 decisions on whether or not to grant somebody credit?

6 A Correct.

7 Q Okay. And it is not the purpose of -- of the
8 credit bureaus to assist in creditors collecting
9 money?

10 A Correct.

11 Q But isn't that how First Union used Ms. Bach's
12 credit report in this case?

13 A What do you mean?

14 Q Well, you're reporting information about
15 Ms. Bach that she owes First Union 24-, 25-, \$26,000,
16 you agree with that?

17 A Yes.

18 Q Okay. And then we have your internal
19 documents which say this is a possible fraud account,
20 she may or she may not owe us this money, do you agree
21 with that?

22 A That is correct. But, again, her reluctance
23 to cooperate and do the things that were necessary to
24 remove her from the account and -- and have this be
25 considered as a fraud account and the balance waived

1 were not done. It was her lack of cooperation that --
2 that made it where the collection activity on this
3 continued.

4 Q Okay. Do you have any agreement with Ms. Bach
5 that requires her cooperation with First Union?

6 A No.

7 Q Now, if you could take a look at document
8 number 60, do you recognize that?

9 MR. DEAL: 6-0?

10 MR. ECKERT: 6-0, yes.

11 A It's a memo type entered by collections in
12 Miami.

13 Q Okay. Do you know what Emerald is?

14 A Emerald is the -- Emerald is the system that's
15 used that houses all information on the relationship of
16 a particular individual. It would have, you know,
17 snapshot information, on, let's say, checking accounts,
18 saving accounts, CDs. Whatever relationships an
19 individual has with the bank would show on Emerald
20 under that person's name.

21 Q Okay. And I -- I haven't received any
22 information, I don't think, on the Emerald system. Is
23 that something you've looked at to see if there's any
24 information regarding Ms. Bach on the Emerald system?

25 A I believe there was information on her.

1 Q Okay.

2 A It's just, you know, her name, address and
3 relationships that she had with the bank.

4 Q Okay. And, I mean, were those documents
5 produced that you know of?

6 A I don't know. I'm not sure.

7 Q Okay. And is Emerald a First Union system?

8 A Yes.

9 MR. ECKERT: Okay. Just for the record, I'd
10 ask that any documents that pertain to my client
11 that First Union has, I'd insist they be produced,
12 John.

13 MR. DEAL: We'll go back and check.

14 MR. ECKERT: Thanks.

15 MR. DEAL: Sure.

16 BY MR. ECKERT:

17 Q If we could look at document number 63.

18 A Okay.

19 Q It says in the fourth line of the notation --
20 let's see, third line of the notation, I advised that
21 if granddaughter did indeed make charges without her
22 knowledge, if she don't press charges against her,
23 we'll submit this account for legal. Do you see where
24 it says that?

25 A Yes, I do.

1 Q Okay. Could you tell me what -- upon what
2 basis that -- that threat can be made?

3 MR. DEAL: Objection to the form of the
4 question.

5 A Well, again, that goes to policy at First
6 Union. If -- if an individual is not going to
7 cooperate and press charges against a perpetrator of
8 fraud, if they're not willing to execute a fraud
9 affidavit, then we would continue collection activity
10 on that individual.

11 Q Okay. Regardless of whether or not you have
12 proved that that individual had any kind of a
13 contractual relationship with First Union, correct?

14 A Collection activity would continue, yes.

15 Q Okay. When it says, We'll submit this account
16 for legal, what's that mean?

17 A That means that the account will be submitted
18 for legal review.

19 Q Okay. And that's to decide whether or not
20 some sort of action is going to be filed against
21 Ms. Bach?

22 A Correct.

23 Q Okay. And why does First Union decide not to
24 sue Ms. Bach?

25 MR. DEAL: Objection.

1 A The reason why Ms. Bach would not have been
2 sued is the account in and of itself would not have
3 been deemed to be a suitworthy account.

4 Q And why is that?

5 A Because of her age, because of the dispute,
6 you know, in question. First Union did not do a lot of
7 precharge-off litigation. It was very, very minimal.
8 And the precharge-off litigation that we would engage
9 in would be on the files that we thought were the most
10 collectible and the most suitworthy. This simply would
11 not have been one of the top -- top cases as far as
12 recovery post judgment, for instance.

13 Q Okay. And also it wouldn't have been a real
14 strong -- I mean, you guys didn't think that you could
15 win against Ms. Bach, did you?

16 A Again, I mean, why -- why consider that when
17 there's other accounts out there that are more
18 suitworthy.

19 Q Okay. But I guess what I'm trying to
20 understand is you have some accounts that you feel that
21 you have good evidence and then, therefore, you may
22 file suit on the cases where you feel like you have
23 good evidence, correct?

24 A It's not just evidence, sir. It's also the
25 ability to recover, you know, post judgment, you know.

1 The financial ability of the individual. I believe
2 that, you know, that we did know that Ms. Bach was 75
3 years old, you know. There would have been, you know,
4 some information probably that would have been looked
5 at regarding, you know, her finances. And, you know,
6 it's not just -- it's not just evidence, it's also the
7 ability to pay as a result of litigation.

8 Q Okay. So at some point in time, I would
9 assume First Union decided that -- that they weren't
10 going to sue Ms. Bach?

11 A Correct.

12 Q And at that same point in time, they decided
13 they were going to keep on reporting adverse credit
14 information about her?

15 A The information continued to be reported,
16 yes.

17 Q If you could look at document number 69.

18 A Okay.

19 Q We're at January 31st of 2000.

20 A Yes.

21 Q Okay. And the notation says, Spoke with Ruben
22 in fraud department, said that this is no longer being
23 handled by fraud department. Said as of 5/99, this was
24 turned over to the Ormond Beach Police Department as a
25 domestic case.

1 A Correct.

2 Q Do you see that? So is it fair to assume from
3 this notation that from 5/99 to January 31st of 2000,
4 First Union's fraud department did not conduct any
5 investigation into this account?

6 A I -- I don't know if there -- if they would
7 have conducted an investigation after the date. What
8 it looks like to me that this means is that since it
9 was a domestic case, it was in the hands of the Ormond
10 Beach Police Department, the fraud department was not
11 actively pursuing it and handling it as a fraud matter.

12 Q Okay. And would not this notation go against
13 your earlier assumption that fraud was monitoring this
14 in October of '99?

15 A Well, there was -- in October of '99 there was
16 a notation in the system by the fraud prevention
17 department. Whether -- I mean, you know, what they
18 were doing at the time of the account, I don't know.
19 But it's obvious from the computer record that a call
20 did take place in October '99, you know, whether it was
21 outbound or inbound, and it was handled by the fraud
22 department.

23 Q Okay. Do you know who Mike Fernandez is?

24 A Mike Fernandez, yes.

25 Q Who is he?

1 A He used to work in the recovery department in
2 Miami.

3 Q Okay. And he -- he was an attorney?

4 A No, he was not.

5 Q Okay. Document number 7-0?

6 A Uh-huh.

7 Q There's a notation that someone spoke with
8 Mike Fernandez of the legal department, said it's
9 possible this was rejected, even though he don't see it
10 on his list, said CS's of age and if she's not going to
11 press charges against her granddaughter, there's not
12 much she can do.

13 Where it says, There's not much she can do, do
14 you know who that "she" is referring to?

15 A I do not.

16 Q Okay.

17 MR. DEAL: Where -- what do you have reference
18 to?

19 MR. ECKERT: Document number 7-0.

20 MR. DEAL: Okay.

21 BY MR. ECKERT:

22 Q Can you -- call you tell me what this notation
23 means?

24 A It looks to me like collections Miami
25 contacted Mike Fernandez to see if this account had

1 been approved for litigation or not.

2 Q Okay.

3 A And what -- what Mike Fernandez is saying is
4 that it's possible that it was rejected, even though he
5 didn't see it on his list. I'm assuming that he had a
6 list that he kept of rejected files.

7 Q Okay. And you don't know who "there's not
8 much she can do" is referring to?

9 A No, I -- I don't.

10 Q And then document 72, it says, Receive
11 litigation referral, do you see that?

12 A Yes.

13 Q It says, Request is turned down?

14 A Correct.

15 Q Now, is the litigation referral, is that a
16 department within First Union?

17 A No. Litigation referral would have actually
18 been a file that would have been sent from collections
19 to recovery for review. What this means is that they
20 received a litigation referral, would have been a
21 package, the request was turned down. The reason why
22 it was turned down was the debtor has no assets. She's
23 a 75-year-old lady on Social Security. Supposedly her
24 granddaughter has been using the card. Mrs. won't
25 press charges and we can't sue granddaughter.

1 Again, like I was saying earlier, not the
2 ideal prime choice case that you would want to go ahead
3 and file litigation on.

4 Q What was -- what was the purpose in continuing
5 to report information about Ms. Bach after February 2nd
6 of 2000?

7 A The reason why information continued to report
8 was because it was being considered as a collection
9 matter. Fraud was no longer handling the account. And
10 it's clear that the requirements that were necessary
11 from Ms. Bach in order for this matter to be concluded
12 as fraud, she did not, you know -- she did not do those
13 things, those requirements and because of that, it
14 continued as a collection matter.

15 Q Okay. But what was -- what was First Union's
16 goal in continuing to report the information about
17 Ms. Bach to the credit bureaus?

18 A No particular goal. First Union, you know,
19 reports information on all -- on all the accounts in
20 the collection department. As long as it's in
21 collections and it's not a resolved matter, it's going
22 to continue reporting.

23 Q Isn't it one of the requirements that the
24 information First Union report to the credit bureaus be
25 accurate?

1 A Yes.

2 Q Is there anything that First Union has
3 reported to the credit bureaus about Ms. Bach that has
4 been accurate?

5 MR. DEAL: That has been accurate?

6 MR. ECKERT: Yes.

7 A As far as what we perceived the account to be,
8 we thought we were reporting accurate information. And
9 that is that, you know, she was on the account, the
10 account was opened up with her information. And,
11 again, her reluctance to do the things that would
12 have -- you know, that would have closed this account
13 out, that would have resulted as a fraud account were
14 not done, so it continued as a collection matter and
15 that's why it was reported.

16 Q So -- so it's First Union's position that
17 everything that they reported to the credit bureaus
18 about Ms. Bach was accurate?

19 A In the sense that it was still a collection
20 matter, yes.

21 Q Well -- and is there any sense -- is there any
22 information that First Union reported to the credit
23 bureaus that First Union believes is inaccurate?

24 MR. DEAL: Inaccurate?

25 MR. ECKERT: Inaccurate.

1 MR. DEAL: Not accurate?

2 MR. ECKERT: Not accurate.

3 A No.

4 Q Okay. Can you tell me, then, why First Union
5 has chosen to remove or request the credit bureaus to
6 remove the information about Ms. Bach?

7 A I think that when Ms. Bach in her testimony
8 under oath went ahead and made the assertions that this
9 was fraud, that that was reason at that point in time
10 for us to go ahead and take such -- such action to
11 remove it. I think all along what we've been looking
12 for is some kind of -- some kind of oath of -- you
13 know, from her, whether it was in the form of a fraud
14 affidavit, you know, that would be more than just her
15 word, you know. I just -- I believe that her testimony
16 under oath that -- that this was a fraud matter was
17 sufficient for us to take that action.

18 Q Okay. She filed a complaint in this case?

19 A Correct.

20 Q And you received that?

21 A I -- I think I've seen the complaint before,
22 yes.

23 Q Okay. And did that -- and that wasn't enough
24 to do it for you guys to remove the information?

25 A No. At the time, no.

1 Q Okay. So it's fair to say that the only
2 reason First Union -- strike that.

3 It's fair to say that First Union would only
4 remove this information about Ms. Bach if she filed
5 suit against them?

6 A That's not true.

7 Q Okay. Well, would it be fair to say that
8 because Ms. Bach filed suit against First Union --
9 well, strike that.

10 After Ms. Bach filed suit against First Union,
11 at some point in time First Union decided that Ms. Bach
12 did not have the account that you had been reporting to
13 the credit bureaus?

14 A Yes. I think more so importantly after her --
15 her testimony under oath that she did not apply for
16 that account.

17 Q Can you look at document number 73?

18 A Yes.

19 Q Okay. Can you tell me, did Ms. Bach ever give
20 anyone from First Union permission to speak to any of
21 her relatives?

22 A I don't know if she did or not.

23 Q Okay. Well, it appears from this notation
24 that someone from First Union called Ms. Bach's home?

25 A Yes.

1 Q Okay. And someone who said that she was
2 Heidi's sister was told about fraud by a granddaughter
3 using a card without the customer's permission, do you
4 see that?

5 A Yes, I see that notation.

6 Q Did Ms. Bach ever give anyone from First Union
7 permission to discuss this situation with anyone else
8 in her family?

9 A Again, I do not know if she did or she did
10 not. I have no record that she gave us permission.

11 Q If you could take a look at the document
12 number 75.

13 A Okay.

14 Q Do you recognize that document?

15 A I -- I do not.

16 Q Do you know what the notation means in there?

17 A I do not.

18 Q And what I'm talking about is the one that
19 starts 4AUTO.

20 A Yeah, I'm not familiar with that and I don't
21 even know what the memo type 197 is.

22 Q Okay. Who would we talk to about that?

23 A This is a good one. I -- I really don't know.
24 It looks like it might be a system -- I -- I guess
25 someone that would be very familiar with the FDR

1 system.

2 Q And the letter you received from my office,
3 that was dated February 8th, correct?

4 A The date on your letter was February 8th,
5 correct.

6 Q Okay. And that was faxed to First Union?

7 A From what I can tell by your cover letter,
8 yes.

9 Q Do you have any reason to dispute that it was
10 not faxed to First Union on that day?

11 A No.

12 Q If you could look at document number 76.

13 A Uh-huh.

14 Q Okay. Can you tell me what that notation
15 means?

16 A Looks like it was a call placed by collections
17 Miami.

18 Q Uh-huh.

19 A Lady said can't give you any information, hung
20 up.

21 Q Okay. So this is an attempt by -- by First
22 Union to contact Ms. Bach after receiving my letter of
23 February 8th?

24 A It seems like that is the case, correct.

25 Q And that would violate First Union's policy,

1 wouldn't it?

2 A I don't know that it's our policy that we
3 can't necessarily communicate with -- with individuals
4 after -- after being represented by an attorney. I
5 mean, I know that First Union follows the spirit of the
6 FDCPA, but I don't know that it's anywhere in writing,
7 maybe it is, that it specifically prohibits us as far
8 as First Union policies are concerned.

9 Q Well, we'll get to that.

10 A Okay.

11 Q And then 2/11 of 2000, I'm looking at document
12 number 77.

13 A Yes.

14 Q Okay. It says, Attorney wants card holder
15 name removed from account, previous fraud notes say, A,
16 will not prosecute third party for fraud. So who is
17 the third party?

18 A Okay. Interesting enough, just -- just for
19 clarification, on this date it's actually received
20 letter from attorney.

21 Q Okay. I see what you're saying.

22 A Yeah, received letter from attorney. And
23 it -- it could very well be that on -- it could very
24 well be that on the February 10th date, the collections
25 area had as of yet not gotten your fax.

1 Q Okay.

2 A I'm not sure where you faxed it to, but if you
3 would have faxed it, for instance, to -- you know, to
4 customer service or another area of the bank, it may
5 have taken it a couple days to get to collections. But
6 just as clarification, on February 11th, this says
7 received letter from attorney, wants card holder
8 removed from account. Previous fraud notes say -- say,
9 A, and I believe that A stands for the primary, the
10 primary card holder --

11 Q Uh-huh.

12 A -- will not prosecute third party for fraud.
13 The assumption would be the third party is Heidi Bake,
14 but, again, that's just an assumption.

15 Q Okay.

16 A Will forward letter to Miami and send copy to
17 filming. Interesting enough, it seems like the letter
18 originally went to collections in Wilkesboro that's
19 what C-O-L-W-L-K stands for, collection Wilkesboro.
20 And it seems that they were going to forward the letter
21 to Miami. The reason why was because the account was
22 being, I believe, worked in collections Miami.

23 Q Okay. Can you look at -- do you have the
24 letter from my office dated February 8th, 2000, there?

25 A Yes, I have it.

1 Q Okay. Can you mark that as Exhibit 5?

2 A Okay.

3 (Plaintiff's Exhibit E was marked for
4 identification.)

5 MR. DEAL: Hold on just a second, I'm trying
6 to locate that.

7 MR. ECKERT: Sure.

8 MR. DEAL: Okay. This is a two-page letter?

9 MR. ECKERT: Three-page.

10 MR. DEAL: Three-page. So the fax cover sheet
11 is on the third page?

12 MR. ECKERT: Correct.

13 MR. DEAL: And that's -- is that E, Exhibit E,
14 right?

15 MR. ECKERT: Oh, I'm sorry, you're right.

16 BY MR. ECKERT:

17 Q Do you have that?

18 A I have it.

19 Q Okay. It says it was faxed to Christy in
20 Brunswick, Georgia.

21 A Okay.

22 Q And do you know what department that is?

23 A Actually, this Brunswick, Georgia, that P. O.
24 Box --

25 Q Uh-huh.

1 A -- is not even a department. That was just a
2 P. O. Box that was used for credit card payments and
3 mail, but there was no actual presence or building in
4 Brunswick, Georgia, to the best of my knowledge.

5 Q What about the facsimile number 336-651-5227,
6 do you know where that goes?

7 A I do not. But I -- I will say this, the
8 fascimile did not go directly to the Miami collections
9 department --

10 Q Uh-huh.

11 A -- because in Miami -- obviously, Miami is a
12 305 area code. So it would not have gone directly to
13 the department that was engaged in the collection
14 activity.

15 Q Okay. In the second paragraph of this letter,
16 about halfway through the second paragraph, there's a
17 request that First Union provide legible copies of all
18 transaction signatures.

19 A Yes, I see it.

20 Q Has First Union ever made any effort to -- to
21 look at the transaction signatures?

22 A Are you talking about sales drafts?

23 Q Yes.

24 A I believe that -- I believe that attempts have
25 been made to request it. I, myself, have not, but I do

1 believe that -- that that may have happened.

2 Q Okay. Do you know if any of those were ever
3 obtained?

4 A I have not seen sales drafts. I've only seen
5 statements on the account.

6 Q Okay. Has anybody told you that they have
7 looked at the signatures on sales drafts?

8 A No.

9 Q Okay. And do you know who it was that was
10 possibly looking into that?

11 A This was originally handled by Teresa Mahallic
12 in Miami. She's no longer with the bank.

13 Q Uh-huh.

14 A And more recently, Monica Pendleton has been
15 handling this account.

16 Q Okay.

17 A I'm assuming that if such a request would have
18 been placed, that it would have been from either of
19 those individuals.

20 Q Okay. And is that something that could have
21 been done back in November and December of 1999, in
22 that the bank could have requested copies of the sales
23 drafts?

24 A If it would have been requested, it could have
25 been, yes --

1 Q Okay.

2 A -- back in that time.

3 Q And you have -- you have no information to
4 suggest that was done?

5 A Correct.

6 Q Okay. Do you have any documents, sales drafts
7 or account applications that First Union contends were
8 signed by Ms. Bach?

9 A I do not have any such documents in my
10 possession, no.

11 Q Okay. Have you ever seen any such documents?

12 A No.

13 Q Still there?

14 A Yes, I am.

15 Q Did you hear my last question?

16 A What was it?

17 Q Have you ever seen any documents that are
18 sales drafts or account applications or checks written
19 on First Union accounts, for that matter, that bear the
20 signature of Dorothy Bach?

21 A I'm sorry if you didn't hear my response, that
22 was, no.

23 Q Okay. I'm sorry about that. If you could
24 take a look at 79, document 79.

25 A Okay.

1 Q The third line says, This account seems to be
2 a fraud account but need to read the notes from fraud
3 to determine outcome.

4 A Yes, I see it.

5 Q Okay. So at least at this point in time,
6 First Union is -- is still treating this thing as a
7 potential fraud account?

8 A Correct. Potentially there is -- there's a
9 problem.

10 Q And the problem -- one of the problems would
11 be that the person that's listed as the card holder may
12 not have opened the account, correct?

13 A Correct.

14 Q And I take it First Union didn't -- didn't
15 place any weight behind the February 8th letter that --
16 that informed them that they were not Ms. Bach's
17 accounts?

18 MR. DEAL: Objection.

19 A I believe that there's a response to your
20 letter of February 8th a little bit later on in the
21 notes.

22 Q Okay. You're talking in the collection note?

23 A Yes. Yes. As a matter of fact, actually, the
24 -- this very same document, 79, that you -- that you
25 mentioned --

1 Q Uh-huh.

2 A -- I could see where some of this work being
3 done is a response to your letter. For instance, order
4 copy of the application opened on 5/99. Also pulled up
5 the statements and all charges showing and pulled up
6 Emerald info. Gave all to Bill Bothe for further
7 review. So it looks to me like that is part of the
8 work being done to respond to your letter of February
9 8th.

10 Q What information did First Union learn as a --
11 as a response to the February 8th letter which tended
12 to prove that Ms. Bach opened up these accounts?

13 A The statements that would have been -- that
14 would have been received, obviously, would have had
15 Dorothy Bach's name on it.

16 Q Okay. But I guess my -- nobody's disputing
17 that the credit card account has the name of Dorothy
18 Bach on it since it was opened up. I think we agree on
19 that.

20 A Right.

21 Q But my question is: As a result of my letter
22 on February 8th stating that the accounts were not
23 opened up by Ms. Bach, what information did you
24 discover that would tend to prove that the accounts
25 were, in fact, opened up by Ms. Bach?

1 A I don't think that anything was discovered. I
2 think here on the notes it indicates that -- that this
3 was a verbal application, so I know that an application
4 was not available.

5 Q Okay. And there were no -- there were no
6 documents discovered that were signed by Ms. Bach?

7 A To the best of my knowledge, correct.

8 Q And there were no collection notes or fraud
9 notes in which Ms. Bach placed -- a call was placed to
10 Dayton number that said that these accounts were hers,
11 nothing like that was discovered, correct?

12 MR. DEAL: Would you repeat that question
13 again, Mike?

14 THE WITNESS: Yeah, repeat that, please.

15 MR. ECKERT: Sure. I apologize.

16 BY MR. ECKERT:

17 Q There were no notes that you ran across
18 dealing with the time period after October 29th of 1999
19 which suggested that Ms. Bach told First Union that
20 these, in fact, were her accounts?

21 A I -- I really can't answer that because I did
22 not review this, you know. To the extent that Bill
23 Bothe, and Bill Bothe was a manager in credit card, to
24 the extent of his review, I really can't speak. But I
25 would assume that in a case like this, when we are

1 contacted by an attorney, that in addition to having
2 somebody request the application and statements, that
3 he would have gone back in the collection history to
4 look at previous work on the account.

5 Q Okay.

6 A But, again, I mean, I -- I -- I did not -- I
7 was not the one doing this work so I -- I can't answer
8 that.

9 Q Why does First Union give credit to people
10 pursuant to a phone application?

11 A I don't know. Again, that's a question on the
12 origination end.

13 Q Okay. What verification goes into a phone
14 application to ensure that the person on the other end
15 of the phone is actually who they purport to be?

16 A I can't answer that. The best person to
17 probably comment on that would be someone, again, on
18 the origination end. I'm not familiar with the
19 policies and procedures of the origination.

20 Q Would you agree with me that one of the ways a
21 person could apply for a credit card account is to go
22 to a bank branch and present their driver's license or
23 request to fill out an application?

24 A That's one way, sure.

25 Q Okay. And would you agree with me that that

1 is probably a -- a safer way in the sense of preventing
2 fraud than doing applications by telephone?

3 A Yes. For that matter, also, by even doing
4 applications by mail.

5 Q Okay. So mail would be in the same -- the
6 same vain as the phone as compared to -- to someone
7 going in in person?

8 A Yeah. Obviously, if you have someone come in
9 in person, apply at a branch and they've got multiple
10 forms of identification, that would be the safest way
11 to -- to get information on an applicant, yes.

12 Q And is there any -- any law that you know of
13 that requires First Union to take applications for
14 credit by telephone?

15 A I'm not aware of any law.

16 Q Okay. In fact, that's just something they
17 choose to do?

18 A My assumption is that, yes, that would be
19 correct.

20 Q If you could take a look at document 1-0-0.

21 A Okay.

22 Q It says there's a notation here, 1/18/2000, as
23 per Fernando, is that you?

24 A Yes. Now, that's actually, I think, 4/18. I
25 think your copy might --

1 Q It's a bad copy. My apologies. 4/18/2000.

2 A Uh-huh.

3 Q As per Fernando, said no recourse on this
4 account. C/S is old. And going after the
5 granddaughter would be a great waste of money. We are
6 closing as an uncollectible; is that accurate?

7 A This is a note -- that is a notation that was
8 entered into the system by one of my employees in
9 Miami.

10 Q Okay.

11 A In the sense of the account being closed as
12 uncollectible, that -- that's an accurate statement at
13 the time. We felt that the account was uncollectible
14 as regards to -- to Ms. Bach.

15 Q Okay. So at that point in time the bank had
16 taken the position that they were never going to see
17 the money that -- that came out of this account?

18 A Correct. We felt that based on all the
19 previous collection activity and, you know, again,
20 unfortunately, you know, her lack of cooperation as far
21 as fraud affidavit and pressing charges, you know,
22 against the granddaughter, we knew we were not going to
23 collect anything from her. So at that point in time
24 the account was closed.

25 Q Okay. So at that point in time, even though

1 First Union had the -- the understanding that they
2 weren't going to see any money on this account, they
3 were still choosing to report adverse information
4 against Dorothy Bach?

5 A Yes. As a matter of fact, on any account that
6 is closed as uncollectible, we would continue reporting
7 information.

8 Q Okay. Could you go to document 115?

9 A Okay.

10 Q What is that document?

11 A I'm not familiar with this. It just looks
12 like -- it looks like some document from fraud, but
13 I've -- I've never seen this and it's not something
14 that I used in the course of my business.

15 Q That's dated, it looks like, April of 2000?

16 A Correct.

17 Q Do you have any reason to dispute this
18 document, whether it shows that First Union was now
19 treating this account as a fraud account?

20 A No.

21 Q If you could take a look at document 118.

22 A Okay.

23 Q What is this document?

24 A I am not familiar with this document. It
25 looks like it's something that would have been

1 generated by the fraud area, fraud investigation area.
2 But, again, I'm not -- this is not a document that I'm
3 accustomed to work with.

4 Q So somebody in fraud could probably tell me
5 what it means?

6 A I -- I believe so, yes.

7 Q Okay. And if you could take a look at 120.

8 A Okay.

9 Q It says what happened to card, how detected,
10 do you see that towards the bottom?

11 A Yes.

12 Q It says, Card was stolen?

13 A Correct.

14 Q It says, Police report date 6/13/99?

15 A Correct.

16 Q And then that's the card number at the top?

17 A Correct.

18 Q That's one of the card numbers we've been
19 talking about --

20 A Yes.

21 Q -- today? And says, Name on card, Dorothy B.
22 Bach?

23 A Correct.

24 Q Reported by Dorothy B. Bach?

25 A Correct.

1 Q And it says, Contact phone, 904-441-4980?

2 A Yes.

3 Q Does First Union have any information that
4 Ms. Bach ever resided at -- at a place that had that
5 phone number?

6 A No.

7 Q Is this a document that -- that anybody from
8 First Union has looked at in trying to be able to
9 evaluate Ms. Bach's allegations prior to the
10 lawsuit?

11 A I do not -- I do not know that.

12 Q Number 128.

13 A Okay.

14 Q Okay. Do you see -- what is this document?

15 A This is a document requesting a copy of the
16 application on this particular account.

17 Q Okay. And it says, Special handling, please
18 fax a copy of the app to Pam Lopes at phone number.
19 This is a possible fraud, trying to prove a signature.
20 Do you know what they were trying to prove there?

21 A This was a request for the application --

22 Q Uh-huh.

23 A -- submitted by Pam Lopes, who was a
24 collector. And what they were trying to do is they
25 were trying to get the application to see who signed

1 it.

2 Q Okay. And they were trying to prove that -- I
3 would think, trying to prove that Ms. Bach is the one
4 that actually signed the application?

5 A Correct.

6 MR. DEAL: Objection, that's not a question.

7 Q Is that correct?

8 MR. DEAL: Objection.

9 MR. ECKERT: Let me rephrase the question.

10 BY MR. ECKERT:

11 Q Were you trying -- was First Union trying to
12 prove that Ms. Bach signed an application or that
13 someone else signed an application with her name?

14 A I think First Union was trying to determine
15 who signed the application, what the name of the
16 application was.

17 Q And as a result of this -- this inquiry, did
18 First Union discover any information that would suggest
19 that Dorothy Bach was the one that opened up this
20 account?

21 A The -- this document actually clearly shows,
22 it's written in there, unable to locate, which means
23 that the application was not located.

24 Q And that was because it was a phone
25 application?

1 A That is the assumption, correct.

2 Q Now, after October of 1999, First Union was
3 aware that Ms. Bach resided in Ohio?

4 A I believe that is the date, correct, that
5 showed that we spoke to her.

6 Q Okay. On the 29th of October.

7 A Let me just go back and -- yes.

8 Q And you would agree with me that most of the
9 charges were made in Florida --

10 A Correct.

11 Q -- on this account?

12 A Correct.

13 Q Did that tend to suggest to First Union that
14 -- that Ms. Bach was or was not the person who was
15 making these charges?

16 A All that we know is that someone in Florida
17 was making the charges, you know. Absent the actual
18 sales drafts, all we know is that someone was making
19 charges in Florida.

20 Q And, in fact, First Union has never had any
21 evidence that Ms. Bach was the one that was making
22 these charges?

23 A Correct.

24 Q Document number 294 to 305.

25 A Okay. Hold on a second, let me -- let me get

1 over there. Okay. I have those documents.

2 Q What -- what are those documents?

3 A I'm assuming that this is Fair Debt
4 Collections Practices Act. This would be a package
5 that would be given to the collectors in their
6 training.

7 Q Okay. And on number 295, you would agree with
8 me that it says, Although the FDCPA does not directly
9 apply to First Union Banks, First Union will adhere to
10 the provisions of the act?

11 A Correct.

12 Q And this is a document that's issued by First
13 Union?

14 A To the best of my knowledge, yes.

15 Q Okay. If we could go to document 306.

16 A Uh-huh.

17 Q What is this document?

18 A 306, the document that's dated November 1995
19 in the middle, is that the one you're looking at?

20 Q Yeah.

21 A Yes. This, to me, looks to be a very old
22 guide to a collections system.

23 Q Okay. Is that the collections system that
24 we've been looking at previous to this in those
25 collection notes?

1 A No, it is not.

2 Q Okay. So this -- this whole manual, that's
3 306 through 514, what -- it has nothing to do with the
4 system that has -- that was used with Ms. Bach?

5 A Correct. I believe that this information is
6 obsolete. This was the old system the credit card
7 used. As I mentioned earlier, the system that we're
8 looking at, the notes, that was from the FDR system.

9 Q Uh-huh.

10 A To the best of my knowledge, this guide is for
11 the CPS system.

12 Q And this is a system that was used by First
13 Union?

14 A Yeah, before. As a matter of fact, it says
15 here in the -- in document 308, introduction, the card
16 processing solution system, CPS. That's -- this is the
17 old system. This does not apply to what we've been
18 looking at.

19 Q Okay. Is one of the things that First Union
20 uses as a collection technique is to -- to tell people
21 that owe them money that if they don't pay the money
22 that they're going to report them to the credit
23 bureaus?

24 A I -- I believe that it is -- I believe that
25 customers are made aware of the implications of falling

1 behind or being delinquent in their payments. To what
2 extent it's used as leverage, I don't know, but I do
3 know that customers are made aware that if they do not
4 keep up with their regular monthly payments as per the
5 credit card agreement, that it would have adverse
6 effects on their credit rating.

7 Q Okay. Is there any requirement that you know
8 of to -- that -- to warn people that you'll be
9 reporting information to credit bureaus?

10 A That I know of, no.

11 Q Okay. But it's something that First Union
12 chooses to do?

13 A It's something that we -- we advise the
14 customers of the negative implications if they fall
15 into arrears in their payments, yes.

16 Q And, in fact, the information that you
17 transmit to credit bureaus about people who have
18 accounts that aren't paid is generally adverse
19 information to them?

20 A It is information that -- that is adverse,
21 yes.

22 Q Okay. And, in fact, when you send information
23 saying that someone isn't paying you on an account that
24 you have with them, that is actually damaging their
25 credit rating?

1 A It affects their credit score.

2 Q Okay. Well, it doesn't raise it?

3 A Correct.

4 Q Okay. Take a look at document number 472.

5 A Okay.

6 Q You see where it says, Past due 30 days?

7 A Yes.

8 Q It says, Your account is now two payments past
9 due and has been reported to the credit bureau. Please
10 send the total amount due immediately or call us at
11 1-800-829-2245.

12 A Uh-huh.

13 Q Is that a message that First Union uses?

14 A Not that I'm aware of. Not standardly. Let
15 me just see what this document is. Yeah, I -- I -- I
16 can't -- I can't really answer that, because, again,
17 this is a collection question on the front end.

18 Q Uh-huh.

19 A I do not know if this is something that the
20 collectors at one point were told to say or not to say.
21 I really -- this is a collections question.

22 Q Well, let's look at where it says, Past due
23 150 days.

24 A Yes.

25 Q It says, Past balance on this account is now

1 six months past due. Payment of balance must be
2 received immediately to avoid further damaging of your
3 credit rating.

4 A I see that.

5 Q Okay. Would you agree with me that the --
6 that the reason that you're -- that First Union is
7 mentioning the damaging of the credit rating is to
8 encourage the people to pay their debt?

9 A It could be to encourage them to pay their
10 debt. It could also be from a customer service
11 perspective in letting them know and be aware of the
12 implications of not paying their debt, so that they're
13 not surprised later on if they find that -- that
14 they're, you know, being reported delinquent. At least
15 we're giving them an opportunity to pay before -- you
16 know, before that happens.

17 Q Okay. Well, if this is -- if this is a First
18 Union document, a policy that they followed at one
19 point in time, and they got the 30-day notice we talked
20 about earlier, the customer would already be aware that
21 their account is being reported to the credit bureaus?

22 A Yes.

23 Q In fact, they'd already be aware when they got
24 their 90-day notice?

25 A Yes. And, again, I do not know if these were

1 actual notices in writing. Again, I -- I can't speak,
2 this is -- this is collections' procedure and policy.

3 Q Okay. Let's go back, if we could, to Exhibit
4 A, document number 8.

5 A Okay.

6 Q Okay. And this is a -- this is an account
7 statement for an account in the name of Dorothy
8 Bach?

9 A Yes, it is.

10 Q Okay. And see where it says, Please pay your
11 four-month past due account now to avoid further past
12 due reporting to the credit bureau?

13 A Correct.

14 Q And now it says -- on document number 10, do
15 you have that?

16 A Yes, I see it.

17 Q It says, This account is less than 30 days
18 away from being charged off and irreparably damaging
19 your credit rating. Do you see where it says that?

20 A Yes, I do.

21 Q What is the purpose of informing someone that
22 if they don't pay that their credit rating is going to
23 be irreparably damaged?

24 A Well, you'd be surprised once an account is
25 charged off how many times we will get disputes from

1 individuals stating, I never knew that the account was
2 going to charge off. You didn't tell me it was going
3 to charge off. Again, I think what this does, it
4 serves -- it serves as a notice that, you know, within
5 the next 30 days the account is going to charge off.
6 That way, once it is charged off, if they came back two
7 or three months later and said, I dispute my
8 charge-off, or, you know, I was never advised that this
9 account was going to charge off, it was going to have
10 such an effect on my credit, you know, we could
11 reference the last statement prior to charge-off and
12 say, You know what, you were -- you were -- you were
13 advised that this would happen, so.

14 Q And what can a -- what can a card holder do to
15 prevent it from being a charge-off after -- after they
16 get this -- this notice?

17 A They would have to cure -- they would have to
18 cure the debt. That is, they'd have to go ahead and
19 make whatever payments are due to bring the account
20 current. And -- and in doing so, it would -- it would
21 save this state of action from happening.

22 Q And you, in fact, have never received a
23 payment on this credit card account from Ms. Bach?

24 A From Ms. Bach directly, not that I know of,
25 no.

1 Q And then document number 12 --

2 A Yes.

3 Q -- do you recognize that document?

4 A That looks like the last statement showing
5 when the account charged off.

6 Q And does it indicate anywhere in any of these
7 statements that Ms. Bach disputes that -- that these
8 accounts are hers?

9 A On these statements, no.

10 Q Okay. Why is that?

11 A These are computer-generated statements. And
12 to be honest, I don't know -- I don't know if it could
13 be formatted in such a way to have an entry in there
14 indicating a dispute.

15 Q So would you agree with me that -- that a
16 charged-off account appearing on someone's credit can
17 cause irreparable damage to their credit rating?

18 A It would -- it would not be beneficial. It
19 would be a negative aspect of their credit report,
20 yes.

21 Q Okay. And we're talking about -- at least on
22 this account, we're talking about over \$25,000?

23 A Correct.

24 Q And that's, in fact, what was reported to the
25 credit bureaus as Ms. Bach owing First Union?

1 A Whatever the balance in the system was is what
2 we would have reported to the credit bureau, yes.

3 Q Has Ms. Bach ever owed First Union any money?

4 A No.

5 Q What about if we could go back to, I think it
6 would be Exhibit B, document number 479.

7 A Okay.

8 Q At the top paragraph, it says, We are sure you
9 will agree having a good credit record is very
10 important in our world today. Would you agree with
11 that statement or is that a false statement?

12 A You said 479?

13 Q Yes, 479.

14 A Okay. Would I agree with that statement?

15 Q Well, does First Union agree with that
16 statement?

17 A Yes.

18 Q Document number 480.

19 A Okay.

20 Q And these -- these are examples of letters
21 that would be sent to people First Union believed owes
22 them money, correct?

23 A Yes. I believe that these are letters that
24 would have been sent from collections. But, again, I
25 do not know that these were specifically the letters

1 sent on this account, that I do not know.

2 Q I understand that.

3 A Okay.

4 Q And -- and in document 480, in the second
5 paragraph, it says, Your account is number 16 payments
6 past due for a total due of number 11. Please send
7 this amount today, otherwise we must report an
8 unfavorable credit rating to the national credit
9 bureaus, which could result in it being more difficult
10 to obtain future credit. Do you see that?

11 A Yes, I do.

12 Q And do you agree that First Union reporting
13 unfavorable credit ratings to the national credit
14 bureaus could result in it being difficult for a
15 consumer to obtain future credit?

16 A Yes.

17 Q And document 481 --

18 A Okay.

19 Q -- if it -- it says in the second paragraph,
20 If a number 9 payment is not received, we must report
21 an unfavorable credit rating to the national credit
22 bureaus.

23 A I see that.

24 Q Okay. And in this -- in this type of a
25 letter, First Union would be saying, If you don't pay

1 us money, we're going to report you to the credit
2 bureau?

3 A Correct.

4 Q And then at the bottom of that, it says, We
5 will help in every way possible to resolve this
6 situation. Do you see where it says that?

7 A To resolve this problem, yes.

8 Q Okay. Problem. And did First Union help
9 Ms. Bach in every way possible to resolve this -- this
10 situation?

11 A I believe by looking at the collection
12 activity that we did. I believe that there is numerous
13 entries, even from the collections department, where it
14 indicates that they would contact her and, you know,
15 that she would say that she didn't even know that we
16 were calling from First Union.

17 Q Uh-huh.

18 A She would hang up. She was not very
19 cooperative to that extent. And, then again, you know,
20 obviously, the fact that it was brought to her
21 attention that her granddaughter apparently had
22 perpetrated the fraud and that all we needed simply was
23 her cooperation to press charges against the
24 granddaughter and to have a fraud affidavit executed
25 and that in doing so, that would, you know, that --

1 that would rectify the situation. The fact that she
2 never cooperated with the bank when she was told what
3 she needed to do, to me -- to me, it shows that we
4 certainly explained to her what it is that was required
5 from her to resolve the situation and she chose not --
6 not to do it. She chose not to cooperate.

7 Q You would agree with me that the reason why
8 the credit bureaus weren't notified that they should
9 remove the information from Ms. Bach's credit file in
10 November of 1999 was because of First Union's internal
11 policies?

12 A In the sense that collection activities
13 continued because of what we perceived to be Ms. Bach's
14 lack of cooperation in resolving the issue, yes.

15 Q Okay. Can you take a look at document 484?

16 A Yes, I have the document.

17 Q Okay. Your failure to -- I'm looking at the
18 third paragraph down, it says, Your failure to comply
19 with this demand may necessitate our taking legal
20 action, which may result in expense and embarrassment
21 to you.

22 A I see it.

23 Q Okay. Do you know if -- if this type of a
24 letter was ever sent to Ms. Bach?

25 A I do not know that.

1 Q Okay. And is this a letter that you've ever
2 seen First Union send out?

3 A I have not seen this particular letter before,
4 no.

5 Q If you could take a look at document 493.

6 A Okay.

7 Q At the bottom where it says, Fraud
8 application --

9 A Yes.

10 Q -- do you know what -- what does that mean?

11 A I -- I'm -- I do not know what this means.
12 And, again, this is the old manual, that old system.
13 And I was not familiar with that old system at all.

14 Q Okay. Does the new system have anything
15 termed fraud application?

16 A It -- it may. I'm not aware of it.

17 Q Okay. Who would I talk to to find that out?

18 A Again, someone in the fraud department or
19 someone that worked the fraud department would be the
20 -- the most accurate testimony to those questions.

21 Q Okay. Now, would you agree with me that at
22 least in the way First Union treated Ms. Bach's
23 situation, what she was alleging was that the
24 application was fraudulently made?

25 A That is what -- that is what she claimed, yes.

1 Q She's never claimed that she opened an account
2 and then someone used it without her permission?

3 A Correct.

4 Q I have some other questions on this document,
5 such as the numbers 494 and on up to the end of the
6 Exhibit B, but is it fair to say that those really
7 should be directed towards somebody in the fraud
8 department or the collection department?

9 A Yes. If they are detailed questions regarding
10 fraud practices or collection practices, those would
11 be the -- the best individuals to ask those questions
12 of.

13 Q Okay. Now, do you know if the card that was
14 issued in Ms. Bach's name was a Visa or Master Card?

15 A I believe that it was a Visa card.

16 Q Was Visa ever notified by First Union of the
17 potential fraud in this case?

18 A I'm not aware if they would have been or not.

19 Q Again, that probably would be a question for
20 the fraud department?

21 A Yes.

22 Q If you could take a look at document number
23 521, which I'd like to actually -- strike that. Let's
24 go back.

25 MR. ECKERT: I'd like to introduce document

1 515 through 590 as Exhibit C.

2 MR. DEAL: Wait a minute. Wait a minute. 515
3 through 590.

4 (Plaintiff's Exhibit C was marked for
5 identification.)

6 BY MR. ECKERT:

7 Q Do you have that in front of you, Mr. Durand?

8 A Yes, I do.

9 MR. DEAL: Wait a minute. Wait a minute.
10 Okay. Okay. You're calling that exhibit what?

11 MR. ECKERT: C as in cat.

12 MR. DEAL: Okay.

13 BY MR. ECKERT:

14 Q Could you take a look at number 521?

15 A Yes.

16 Q Do you see the check up there at the top?

17 A Yes, I do.

18 Q Okay. And that's drawn on the account of
19 Dorothy Bach?

20 A Correct.

21 Q Okay. And that, in fact, bears the signature
22 of Dorothy Bach?

23 A I would assume, yes. I've never seen her
24 signature, but it's on her check.

25 Q Okay. Have -- have you ever seen her

1 signature on any document, other than what's -- what's
2 on document number 521?

3 A No, I have not seen her signature on any other
4 document, other than any of these checks that she may
5 have signed.

6 Q Okay. Well, I'm -- I only can see one check.

7 A Okay.

8 Q That's on 521. If you know of other checks, I
9 want to know about them now.

10 A Let me look through here. You know what? I'm
11 looking at exactly what you sent to me. So if --

12 Q Okay.

13 A Yeah, if there's nothing else in here, then
14 that's the only one.

15 Q Okay. Can you tell me why First Union --

16 MR. DEAL: Mike?

17 MR. ECKERT: I'm sorry.

18 MR. DEAL: Just for -- just for clarification,
19 I just want to point out to you that there's also
20 another one, a Dorothy B. Bach check at 116.

21 MR. ECKERT: 116?

22 MR. DEAL: Yeah.

23 A Yes, I see that one also.

24 Q Okay. And that one's actually got a -- says,
25 Preferred bank line, what does -- what does that mean

1 on 116?

2 A I don't know what that -- I don't know what
3 that means.

4 Q Okay. Do you know if that pertains to the
5 credit card and not the checking account?

6 A It's hard to determine, you know, by just
7 looking at it. I don't -- I don't see a reference. I
8 really don't know.

9 Q Okay. Well, it appears that First Union had
10 this document that's marked 116 probably since at least
11 the spring of 2000?

12 A The date on it's April 5th, 2000, yes.

13 Q Okay. But First Union's had this because it
14 was -- it was attempted to be negotiated through First
15 Union?

16 A That would be my assumption, yes.

17 Q Okay. And you don't have any reason to
18 dispute that this is a check not drawn on the checking
19 account, but on the -- on the credit card?

20 A I really don't know what it's drawn on, to be
21 honest.

22 Q Okay. Well, where it says, Preferred bank
23 line --

24 A Right.

25 Q -- it says, XXX XXX XXX XXX 3001.

1 A By looking at that, you would think that it
2 would be tied into the original account number. I
3 believe the original credit card account number, not
4 the original one, the second one, I believe had a 3001
5 ending, correct?

6 Q That's my understanding, too.

7 A Yeah. Yeah. It -- looking at that and making
8 the assumption and the inference, then I would think
9 that this would have been one of those access checks
10 tied to the -- to the credit card account number that
11 was used to make this payment.

12 Q Did -- did First Union ever do any handwriting
13 analysis between Exhibit 116 and 0521?

14 A Not that I know of.

15 Q Okay. And you have that document, October 22,
16 1999, letter from Dorothy Bach, you have that in front
17 of you, too, don't you?

18 A I have that document, however the one that I
19 have is not -- is not signed.

20 Q Okay. Has -- has First Union ever tried to do
21 any type of a handwriting comparison with Ms. Bach to
22 determine whether or not the signature appearing on 116
23 is hers?

24 A Again, I -- I don't know. Fraud may have --
25 I'm not aware.

1 Q Can you tell me why no checks were ever issued
2 on the checking account with First Union that had
3 Ms. Bach's name printed on them?

4 A I don't know.

5 Q Okay. Can you tell me why there were no
6 deposit slips ever printed on the account -- the
7 checking account with Ms. Bach's name printed on them?

8 MR. DEAL: Objection.

9 A I -- I don't know.

10 Q Okay. Do you know if -- if, in fact, there
11 was ever any checks or any deposit slips printed with
12 Ms. Bach's name printed on them? When I say printed, I
13 mean typewritten.

14 A I have no knowledge if there were or not.

15 Q Is that anything that you ever -- First Union
16 ever looked at to try to determine whether or not these
17 accounts involved fraud?

18 A Again, it's something that I have no knowledge
19 of. Perhaps fraud maybe did, I -- I don't know.

20 Q Now, at some point in time First Union became
21 aware that Ms. Bach had wired some funds to Heidi
22 Bake --

23 A Correct.

24 Q -- correct?

25 A Correct.

1 Q But that knowledge was not known to the fraud
2 department in late 1999 and early 2000; isn't that
3 true?

4 A I don't know that. From looking at the
5 notations, it doesn't seem that that knowledge was
6 present.

7 Q And there's -- there's no notation in there in
8 any -- in any respect that says that fraud or
9 collections have knowledge that Ms. Bach had wired
10 money to Heidi Bake?

11 A Correct. In the collection notes, I do not
12 recall seeing any -- any such notation.

13 Q If you'll take a look at document 583.

14 A Okay. I have the document.

15 Q Okay. Do you know what that is?

16 A I don't know what it is. Obviously, on the
17 top it says, Transaction report, but I am not familiar
18 with this document.

19 Q Okay. And do you know what -- do you know if
20 transaction services at First Union is the one that
21 issues these types of reports?

22 A I don't know. I mean, by looking at it,
23 obviously, the document is confirmation of a \$1,000
24 credit that appears to the checking account --

25 Q Uh-huh.

1 A -- from a Lebanon Citizens National Bank from
2 Dorothy Bach, but, again, I'm not -- I don't know who
3 produced this. I don't know if it came from First
4 Union, from Lebanon Citizens National Bank. I would
5 assume, given that First Union's in the top left
6 corner, the heading says, First Union National Bank of
7 Florida.

8 Q Right.

9 A Yes.

10 Q And it's dated April 26th of 1999?

11 A Correct.

12 Q And does First Union have a department called
13 transaction services?

14 A I'm not sure.

15 Q Do you know who I would talk to to find that
16 out?

17 A I would -- I could try to find out. I mean, I
18 could see if there is such a department for you.

19 Q Well, I'll tell you what, let's -- there's a
20 -- there's a copy of an envelope in the exhibits I sent
21 you that I'd like to mark as Exhibit F.

22 MR. DEAL: Hold on just a second.

23 A Yeah, let me -- let me find it.

24 MR. DEAL: Are you talking about the one that
25 has the name that looks like Carl Bernard written

1 on it?

2 MR. ECKERT: That's correct.

3 MR. DEAL: Okay. That's going to be F?

4 MR. ECKERT: Yes.

5 A Okay. I found it.

6 Q Okay. Could you mark an F on there, or the
7 court reporter, please?

8 A Done.

9 (Plaintiff's Exhibit F was marked for
10 identification.)

11 Q Okay. This envelope appears to be from First
12 Union National Bank and it says, Transaction Services,
13 Charlotte, North Carolina, do you see where it says
14 that in the upper left?

15 A Yes, I see it.

16 Q In the upper left of the envelope?

17 A Yes, I see it.

18 Q Okay. And -- and you don't know what that
19 department is?

20 A I really don't.

21 Q Okay. And you don't know what this envelope
22 could -- could deal with?

23 A No, I do not.

24 Q Okay. And how would you -- how would I go
25 about finding out what this envelope dealt with?

1 A That is a good question. I -- I guess
2 probably our best bet is to see if I could find a
3 number for you --

4 Q Okay.

5 A -- for such a department, you know. I could
6 go corporate on-line, directory search and see if I get
7 any hits on transaction services.

8 Q If you could do that and just let Mr. Deal
9 know, that would be -- that would be great.

10 MR. DEAL: Mike?

11 MR. ECKERT: Yeah.

12 MR. DEAL: The copy I'm looking at doesn't
13 have a very legible date in the postmark. Do you
14 have a -- can you tell me what the date is while
15 we're on this document?

16 MR. ECKERT: Yeah, I think that the document
17 is May 3rd of '99. Give me just a second and I'll
18 verify that, though.

19 MR. DEAL: Okay.

20 MR. ECKERT: I don't know. In my notes I have
21 May 3rd of '99. I'm not sure if I have the
22 original envelope, but if I do, I'll -- I'll let
23 you know.

24 MR. DEAL: Okay. So you think that, but
25 you're not certain that that's the date?

1 MR. ECKERT: Well, I know -- I know when I
2 reviewed it before I remember making a note that it
3 was May 3rd of '99.

4 MR. DEAL: Okay.

5 MR. ECKERT: So I'm about 99 percent positive
6 it is.

7 MR. DEAL: All right.

8 MR. ECKERT: Okay.

9 BY MR. ECKERT:

10 Q Mr. Durand, other than this -- this envelope
11 possibly relating to the -- the wire transfer that
12 we're looking at on document number 583, do you know of
13 any other dealings First Union had with -- with
14 Ms. Bach that this might be related to?

15 A This particular -- this particular envelope
16 and this transfer?

17 Q Yes.

18 A I don't know of any others.

19 Q Okay.

20 A But I do -- I do believe there were other wire
21 transfers, though, not just this one.

22 Q I understand.

23 A Okay.

24 Q Were you directed by anybody not to request
25 the credit bureaus to remove the information that was

1 reported regarding Ms. Bach?

2 A Could you repeat that, please?

3 Q Yes. Were you directed by any of your
4 supervisors not to request the credit bureaus to remove
5 the information regarding Ms. Bach?

6 MR. DEAL: Now, your question, did you include
7 counsel there?

8 MR. ECKERT: No.

9 MR. DEAL: Okay.

10 A No, I received no instruction from any
11 superiors.

12 Q Okay. And is there a -- is there a written
13 policy that First Union has that in this type of a
14 situation where someone says that they did not open an
15 account that continued reporting to the credit bureaus
16 is -- is appropriate?

17 A I'm not aware that there is or is not a policy
18 to that effect.

19 Q Anika Harris who is listed as a witness or
20 someone who may know something about this.

21 A Okay. What's your question?

22 Q Do you know who Anika Harris is?

23 A Only from the interpretation of the collection
24 notes. I don't -- I've never spoken to her and I don't
25 know her personally.

1 Q Okay. And have you ever spoken to her about
2 Ms. Bach?

3 A Never.

4 Q Okay. Now, do you -- do you have any evidence
5 to suggest that Ms. Bach opened up the checking account
6 with First Union?

7 A No.

8 Q Do you have any evidence to suggest that
9 Ms. Bach ever participated in her name being placed on
10 that checking account?

11 A No, other than just her name appearing on the
12 statements a month after it was opened.

13 Q Now, the information -- has First Union
14 requested the credit bureaus to delete the information
15 regarding Ms. Bach?

16 A Yes, we have.

17 Q Okay. And when did that take place?

18 A We got confirmation on December 3rd, 2001,
19 that the deletions had taken place.

20 Q Okay. And was that sent to all three credit
21 bureaus?

22 A Yes.

23 Q And can you tell me why that wasn't done
24 sooner than that period of time?

25 A As I stated earlier, I believe what we were

1 looking for was, you know, something from Ms. -- from
2 Ms. Bach, you know, under oath or, you know, something
3 notarized as in the form of an affidavit that would
4 indicate that she -- you know, that she did not use the
5 account, that she did not open the account. And I
6 think that as a result of her testimony under oath,
7 that she -- that she did not give Heidi Bake
8 information to open the account or consent to open the
9 account, that was sufficient for us to go ahead and --
10 and do that deletion at that point.

11 Q And that's pursuant to First Union's internal
12 policies?

13 A Correct.

14 Q And have you also requested them to delete any
15 information about the checking account?

16 A That, I don't know if we've done or not.

17 Q Okay. So how would you find out if -- if the
18 credit bureaus have been requested to -- to take off
19 the information about the checking account?

20 A I would communicate with --

21 MR. DEAL: Objection to the form of the
22 question.

23 Q Who -- who would know at First Union whether
24 or not First Union has requested the credit bureaus to
25 remove information regarding the checking account from

1 Ms. Bach's credit file?

2 MR. DEAL: Objection to the form of the
3 question.

4 A Monica Pendleton should have that knowledge.
5 Monica Pendleton is the one that put through requests
6 for deletions on the credit card account.

7 Q When is the last time that First Union has
8 ordered a credit report regarding Ms. Bach?

9 A I really don't know the answer to that. Just
10 from my recollection and looking at the file that you
11 sent me, I believe it would have been that one instance
12 where the collector requested that CBI, I forgot the
13 date, it was in the collection notes.

14 Q Okay. Now, one of the things that came up in
15 the interrogatories was whether or not First Union had
16 done any investigation pursuant to a contact from the
17 credit bureaus, do you recall that issue generally?

18 A Yes, I recall.

19 Q Okay. In the -- in the documents that have
20 been provided to you, there's -- it's the first page of
21 the -- of the exhibit, it's a letter addressed to Trans
22 Union Corporation, could you locate that set of
23 documents?

24 A Is this the package -- yeah, it says Trans
25 Union Corporation. It's a letter to Trans Union

1 Corporation from Ms. Bach, that document?

2 Q Right. Could we mark that as Exhibit G?

3 (Plaintiff's Exhibit G was marked for
4 identification.)

5 MR. DEAL: Trans Union?

6 MR. ECKERT: Correct.

7 THE WITNESS: Yes.

8 BY MR. ECKERT:

9 Q Okay. And the first two pages appear to be a
10 letter sent to Trans Union, do you agree?

11 A Yes.

12 Q The second two pages appear to be a letter
13 sent to Equifax?

14 A Yes.

15 Q The third two seem to be a letter sent to
16 Experian?

17 A Yes.

18 Q Have you seen that?

19 A Yes, I saw all three letters.

20 Q Okay. And then on back in the packet, there's
21 some certified mail cards, do you see those?

22 A Yes, I see them.

23 Q Okay. And in the -- the second to the last
24 document is a letter sent from Trans Union to Dorothy
25 Bach, do you see that?

1 A Yes, I do.

2 Q Okay. And that's dated August 24th?

3 A Correct.

4 Q Her letter to Trans Union was dated August
5 16th?

6 A Correct.

7 Q They're both of the year 2000?

8 A Yes.

9 Q Does First Union have any reason to dispute
10 that the August 24th letter from Trans Union was in
11 relation to her letter of August 16th?

12 MR. DEAL: Objection to the form of the
13 question.

14 A I have no reason to dispute it.

15 Q Okay. And -- and then the last -- the last
16 document is a letter from Equifax to Dorothy D. Bach,
17 dated September 8th, 2000, do you see that?

18 A Correct.

19 Q And do you have any -- does First Union have
20 any evidence to dispute that that was in response to
21 her letter dated August 16th?

22 MR. DEAL: Objection.

23 A I have no evidence.

24 Q Okay. And is it First Union's position that
25 they were never contacted by any credit bureaus in

1 August or September of 2000 regarding Ms. Bach?

2 A That is correct. The record shows that the
3 collection work, its history, does not show any
4 indication that our department was contacted or that we
5 received a consumer dispute verification form. It's
6 just simply not in the record.

7 Q Okay. So you're saying that Trans Union and
8 Equifax and Experian never sent you copies of these
9 letters?

10 A That is what the record indicates, that we
11 never received anything from the three bureaus
12 regarding this matter.

13 Q I would imagine credit disputes would come up
14 quite often?

15 A Yes.

16 Q Would you agree?

17 A Yes, they do.

18 Q Okay. What does the documentation look like
19 that you would get from Trans Union when a customer has
20 disputed an item on their credit report?

21 A In actuality, there was two -- to the best of
22 my knowledge, there's two ways that that could be
23 communicated to us. One way is in a written form
24 called a consumer dispute verification document. And
25 it's just a -- it's a simple form that would be mailed

1 to us. And, basically, it would have the information
2 of the account in question, the dispute, the reason why
3 we dispute it. And on there it would have a section
4 where we would verify that information is being
5 accurate or not. That's one form.

6 The other form that I believe that they have
7 in communicating such information is -- is through the
8 on-line system, which I'm not very, very familiar with,
9 but I do believe there is also an on-line way of
10 communicating information.

11 Q Okay. And -- and you're saying that you --
12 that First Union's looked at the records and they
13 didn't receive the first written documentation that
14 you're talking about?

15 A Correct. As a matter of fact, this would have
16 transpired, you said, in August or September of 2000,
17 correct?

18 Q Correct.

19 A At that time the individual that would have
20 been responsible for reviewing such disputes actually
21 worked in the recovery department. And it was our
22 policy and procedure that any time any consumer dispute
23 verification form was received by the credit bureaus,
24 or for that matter a direct dispute in the form of a
25 letter from a customer, that it would be entered into

1 the recovery one system. A notation would be entered
2 clearly depicting the date that it was received. And
3 then the same would be done -- on the date upon the
4 completion of such research, a note would be entered
5 into the file that -- that the matter was researched
6 and what the outcome of the research was.

7 And there is no indication -- as a matter of
8 fact, I believe there's a gap in the record from April
9 of 2000, I believe, to April of 2001 where there are no
10 entries at all whatsoever on the account. One of the
11 reasons why that is, of course, is because we had
12 closed the account out. We were not pursuing any
13 active -- any activity in the account, but there's --
14 there's just not record indicating that we received
15 anything from the credit bureaus.

16 Q Okay. And you said it would have been on the
17 recovery one system?

18 A Correct.

19 Q Is that -- do you have any documents on the
20 recovery one system that pertain to Ms. Bach?

21 A It's actually included in one of your
22 exhibits.

23 Q Okay. If it's included in the exhibit, that's
24 fine.

25 A Yeah, it's already -- I saw it. It's already

1 part of your documentation.

2 Q Now, you also stated that you could be
3 notified on-line?

4 A I -- yes. There is a -- there is a system
5 that would -- that would allow for that.

6 Q Have you -- has First Union done any
7 investigation into whether or not there was an on-line
8 communication from the credit bureaus regarding
9 Ms. Bach to First Union?

10 A I don't know if anything was done as far as
11 verifying, you know, whether anything was actually
12 received on-line. But, again, if something would have
13 been received on-line, there was one person that
14 handled all of the credit bureau disputes for the
15 recovery department. And the system of record was a
16 recovery one system. Any notation and any resolution
17 to the fact would have been entered into the recovery
18 one system.

19 Q Okay. And this -- if First Union had received
20 these letters that you're looking at here or received
21 notice from the credit reporting agencies that Ms. Bach
22 was disputing these accounts were hers, that -- that's
23 not new information to First Union, is it?

24 A In the sense that -- in the sense that there
25 were previous -- in the sense there was a previous

1 notation on the account that there was possible fraud,
2 no. But, again, the record -- the record that I can
3 see looking at the collection activity, to me, it
4 doesn't indicate that we ever received anything from
5 the credit bureaus requesting us to do a -- you know,
6 an evaluation or a research on the account.

7 Q Okay. And -- and based on your statement
8 earlier that the only thing that -- that prompted First
9 Union to remove the information regarding Ms. Bach was
10 her sworn deposition testimony, in fact, if you had
11 received this information from the credit bureaus, it
12 would not have changed the credit reporting on
13 Ms. Bach; isn't that true?

14 A What I would have done is at that point in
15 time, we would have contacted Mr. Bach -- Ms. Bach or,
16 actually, we would have looked at the file, we would
17 have seen that you were representing her, we would have
18 contacted you and at that point in time, we would have
19 directed a fraud affidavit to you to have her execute
20 it. And as soon as she would execute the fraud
21 affidavit statement that she did not open the account,
22 that she had no knowledge who opened it, that would
23 have been sufficient for me to go ahead at that point
24 in time and delete the account.

25 Q Okay. So you're saying -- you're saying that

1 -- that if First Union would have received notice from
2 the credit bureaus that Ms. Bach disputed this account,
3 then she could have had it removed?

4 A Absolutely, if she would have been willing to
5 go ahead and execute the fraud affidavit. Absolutely.

6 Q Whose requirement is it a fraud affidavit be
7 executed?

8 A Again, this is departmental policy.

9 Q Okay. We're talking, again, clearly within
10 First Union?

11 A Correct. I also believe -- Mr. Eckert, I'm
12 not sure, that at one time when you were in
13 communication with Bill Bothe, that he had mentioned
14 something to you and it's reflected in the records
15 about a fraud affidavit, and I don't see that anything
16 ever was done with that.

17 Q And, Mr. Durand, is it also -- is it your
18 understanding, too, that what was required to be put in
19 that affidavit was that Ms. Bach agreed to take all
20 steps necessary to cooperate -- cooperate in
21 prosecuting whoever may have done this?

22 A Yes.

23 Q Okay. And, in fact, that could be interpreted
24 as requiring her to fly to Florida on her own to
25 prosecute someone who had done this?

1 A I -- I don't -- I can't answer that. I don't
2 know. That's speculative.

3 Q Okay. And, in fact, Ms. Bach would have been
4 required by this affidavit to implicate a specific
5 individual; isn't that true?

6 A If she would have known who the perpetrator of
7 the fraud would have been, yes, we would expect her to
8 -- to aid us identifying that person and cooperating in
9 -- in prosecuting that person, yes.

10 Q And what was required by the affidavit that --
11 that First Union had proposed was that Ms. Bach
12 implicate her granddaughter in -- in the theft of
13 money, isn't that what First Union was requiring?

14 A That is correct, because of the information
15 that we received from the Ormond Beach Police
16 Department that, indeed, it was Heidi Bake that had the
17 possession of the credit card and accessed checks on
18 that account.

19 Q And did you send Ms. Bach your collection
20 notes showing this conversation with the police
21 department?

22 A I did not send her those notes, no.

23 Q Do you have any record of anybody sending her
24 these notes -- at that point in time when you requested
25 the affidavit implicating her granddaughter, did you

1 send her any proof that the police department
2 conversations actually occurred?

3 A I don't know if proof was sent to her or not.

4 Q And so it was -- First Union assumed that
5 Ms. Bach had to take First Union's word that, in fact,
6 this whole transaction with the police department
7 occurred?

8 A My -- my assumption is if she would have
9 requested a copy of the police report that, you know,
10 that could have been made available to her.

11 Q Is there any police reports that First Union
12 has?

13 A Not that I'm aware of.

14 Q All right. And, in fact, First Union at the
15 time they were calling Ms. Bach up in Ohio was telling
16 her that she was responsible for these accounts; isn't
17 that true?

18 A They were contacting her, yes. And, again,
19 that was subsequent to -- to the fraud department not
20 handling the account anymore, based on the fact that
21 she would not execute the affidavit of fraud and -- and
22 pursue or help us pursue her granddaughter.

23 Q In November of 1999, the collections
24 department was undergoing collection efforts trying to
25 get Ms. Bach to pay First Union money, do you agree

1 with that?

2 A Let me take a look at the collection notes
3 back in November.

4 Q Take November and December.

5 A Okay. You said November and December,
6 Counsel?

7 Q Yeah, of 1999.

8 A Actually, looking at the collection notes
9 specific to those months, November 3rd, 1999, there's a
10 note here from collection Miami, fraud was notified
11 since 5 of '99 card holder has been aware that
12 granddaughter has been using account. The previous
13 notes from fraud, Twice card holder has declined to
14 press charges against her. Now she wants copy of
15 statements, which they have been ordered already. So
16 to that extent, I mean, it seems to me that -- that
17 that is -- you know, I don't know. I mean, I don't see
18 a demand for payment there.

19 Q Okay. I don't want to cut you off, but, I
20 mean, if you want to keep going, that's fine, I'm not
21 trying to cut you off, but that kind of answered my
22 question.

23 A Okay. Yeah, the same thing, December 23rd,
24 '99, there was a call that was made, but, again, said,
25 Would not answer straight. Kept beating around the

1 bush. I don't know. I mean, I don't see any actual
2 notes there that, you know, they were necessarily
3 demanding her to pay. It could very well have been
4 that they were trying to contact her, you know, to get
5 information or to get her to fill out the fraud
6 affidavit. It's just not very clear based on the
7 collection notes.

8 Q Okay. So it -- are you saying that as of
9 October 29th, 1999, First Union was no longer seeking
10 payment from Ms. Bach?

11 A No, that's not true. I'm just saying that
12 during those two months it's hard to ascertain whether
13 the -- whether they were specifically trying to do that
14 or trying to get information from her to resolve this
15 matter. I just can't tell.

16 Q There's a document that I sent to you, it's a
17 First Union document, and on the first page it says,
18 First Union wants to work with you. Could you take a
19 look for that?

20 MR. DEAL: This is in the batch with your
21 cover letter?

22 MR. ECKERT: Yes, it is.

23 MR. DEAL: It's a one-page document.

24 A Yes, I see it.

25 Q Okay.

1 MR. DEAL: I don't see it.

2 MR. ECKERT: I'm sorry, let me know when you
3 find it, John.

4 MR. DEAL: Hang on a second. I've got it now.

5 MR. ECKERT: Okay. Could we mark this as
6 Exhibit H?

7 THE WITNESS: Okay.

8 (Plaintiff's Exhibit H was marked for
9 identification.)

10 BY MR. ECKERT:

11 Q Okay. Do you recognize this document?

12 A Is it -- it's not a document that I use, but I
13 do recognize this as a fixed payment plan letter that
14 would have been sent from the collections area.

15 Q Okay. Now, this would be a letter that First
16 Union sends out to people in an effort to try to
17 collect money from them, correct?

18 A Correct.

19 Q Okay. And in this document, about two-thirds
20 of the way down, it says, Placing your account on this
21 program will eliminate further collection calls and
22 letters. It also prevents your account from being
23 charged off and reported to the bureaus where it will
24 become a negative part of your credit history for the
25 next seven years. Do you see that?

1 A Yes, I do.

2 Q When is this document sent to -- sent to the
3 card holder?

4 A I can't answer that. I don't know the
5 specifics of when the document would be sent. I'll
6 tell you this, it is a fixed payment plan and it's a
7 document that would be sent, you know, to accounts that
8 the customer's expressed, you know, financial hardships
9 in making their payments. I don't know. Where in the
10 collection cycle this would be sent, I can't answer
11 that.

12 Q Okay. Do you think that some of the notations
13 that we looked at before may abbreviate this type of a
14 document with a FPP?

15 A Possibly.

16 Q Okay. Now, if this document were sent to
17 Ms. Bach -- first of all, do you have any -- do you
18 know if this document was sent to Ms. Bach?

19 A I do not. I do not know what address this was
20 sent to.

21 Q Okay. And is there -- is there any other
22 purpose behind sending this type of a document to a
23 card holder, other than trying to get them to pay you
24 money?

25 A No. This is a document to get them on a

1 payment plan.

2 Q Okay. And are fixed payment plans usually
3 instituted after card privileges are suspended?

4 A I really can't answer that. I don't know the
5 answer to that.

6 Q Okay. That would be a collections question?

7 A Yeah. Yeah, that would be a collections
8 question. Obviously, it would not be sent on a current
9 account.

10 Q Okay. Also in the documents, there's some
11 credit reports, do you see those?

12 A Yes, I do.

13 Q Okay. If you could, could you find the CBC
14 credit report that's dated, Completed 10/22/99?

15 A Yes, I see it.

16 Q Okay. And on the third -- could we mark that
17 Exhibit I?

18 (Plaintiff's Exhibit I was marked for
19 identification.)

20 MR. DEAL: Hang on a second, Mike. I just --

21 Q You see it doesn't have that date on it?

22 A There's two of them. There's one that has the
23 date completed 6/22/2000 and one that has a date
24 completed 10/22/99. You're referring to 10/22/99,
25 correct, Counsel?

1 MR. DEAL: Okay. I have it.

2 MR. ECKERT: Okay. Exhibit I. We're all on
3 the same page now.

4 A Yeah. Is that the one date completed
5 10/22/99?

6 Q Correct.

7 A Okay.

8 Q Down at the bottom of the -- or the middle of
9 the third page, it says, FUNB, is that the initials for
10 First Union National Bank?

11 A Yes, it is.

12 Q Okay. And it says, Line of credit?

13 A Yes.

14 Q Okay. Is that the credit card?

15 A That is one of the credit card numbers,
16 correct.

17 Q Okay. And then it says that, The balance
18 owing is 21,357?

19 A Correct.

20 Q And then the type and account status says, REV
21 01?

22 A Correct.

23 Q Do you know what that means?

24 A I really -- I'm not familiar with this report.
25 I really -- I wouldn't want to guess.

1 Q Okay. And it says, Date reported 7/99, do you
2 see that, the first column?

3 A Yes. Yes, I see it.

4 Q Okay. Now, the next document would be the CBC
5 credit report dated 6/22/2000. Can we mark that as
6 Exhibit J?

7 A Okay. I have it.

8 (Plaintiff's Exhibit J was marked for
9 identification.)

10 Q Okay. And, now, the first two items in credit
11 history on the first page says, First Union Direct B,
12 do you know what that stands for?

13 A Direct bank.

14 Q Okay. And then the next one down says, First
15 Union National?

16 A Correct.

17 Q And then the -- the first entry is reporting
18 as a charge-off?

19 A Yes.

20 Q Okay. And that's the -- the negative thing
21 that we were talking about earlier that can affect
22 somebody's credit?

23 A Correct.

24 Q And you were -- First Union was reporting
25 this, it looks like, as of May of 2000?

1 A That is correct.

2 Q If you could take a look at the credit report
3 Trans Union printed on 9/13/2000.

4 A Okay. I have it.

5 Q Okay. And on this one on the first page --

6 A Are we going to mark this as an exhibit?

7 Q Yeah. Let's mark that K.

8 A Okay. Done.

9 (Plaintiff's Exhibit K was marked for
10 identification.)

11 Q Okay. Where it says, We have completed our
12 re-investigation and the results are shown below, are
13 -- are you aware of any re-investigation that ever
14 occurred on this account?

15 MR. DEAL: Where are you reading, Mike?

16 MR. ECKERT: We're in the middle of the page.

17 MR. DEAL: Middle of which page?

18 MR. ECKERT: The first page.

19 MR. DEAL: Okay.

20 BY MR. ECKERT:

21 Q It says, Investigation results, and then it
22 says, We have completed our re-investigation and the
23 results are shown below. Do you see that?

24 A I -- I see it.

25 Q Okay. And your -- your testimony is that

1 First Union never participated in any type of a
2 re-investigation of these accounts in September of
3 2000?

4 A Correct, that's what the record indicates.
5 There's no -- there's no record to that effect.

6 Q Okay. And, then, also at least according to
7 this report, it's saying, In regards to First Union,
8 and the account ending 5909, that there's new
9 information below.

10 A I see that.

11 Q Okay. Do you know of any information that
12 was transmitted to the credit bureaus in September of
13 2000?

14 A I -- I do not.

15 Q Okay. Could you turn the page, please?

16 A Sure.

17 Q At the top of the page, it says, FUNB, dash,
18 DB --

19 A Yes.

20 Q -- profit and loss write-off?

21 A Yes.

22 Q Is that something that First National -- or
23 First Union would report to the credit bureaus, that
24 it's a profit and loss write-off?

25 A Yes, that is the equivalent of a charge-off.

1 Q Okay. But, I mean, is -- can you think of any
2 other source where the credit bureaus would have gotten
3 that, other than from First Union?

4 A I -- I can't think of any.

5 Q Okay. And do you see where right underneath
6 it, it says, Verified 9/2000?

7 A Correct.

8 Q So is it First Union's position that the
9 credit union was inaccurate in saying that this was
10 verified in 9 of 2000?

11 A It's our position that we don't have any
12 records that indicate an investigation took place or
13 that we were contacted to perform such investigation.
14 It's just simply not part of our record.

15 Q Okay. But other than the fact that you guys
16 don't have any documentation to that effect, do you
17 have any other reason to dispute the credit bureau's
18 statement that this was verified in 9 of 2000?

19 A No, no reason to dispute.

20 Q I'd like to mark as Exhibit L the credit --
21 looks like credit scope report --

22 A Yes.

23 Q -- dated 10/3.

24 A Okay. It's done.

25 (Plaintiff's Exhibit L was marked for

1 identification.)

2 Q Okay. And then also the first entry in that
3 credit history is FUNB, do you see that?

4 A Yes, I do.

5 Q It also indicates charged-off account?

6 A Yes.

7 Q And then it's reported in October of 2000?

8 A Correct.

9 Q Okay. Do you have any reason to dispute that
10 First Union reported to the credit bureaus in October
11 of 2000 that Ms. Bach held a charged-off account with
12 them?

13 A No.

14 Q If you could look at the second page, towards
15 the bottom.

16 A Yes.

17 Q It appears there's an entry in inquiries, it
18 says, FU-BKCD, what does that mean?

19 MR. DEAL: Where are you now?

20 MR. ECKERT: At the bottom of the second page.

21 MR. DEAL: Okay. I see it.

22 A Yeah, it's kind of faded. That would be an
23 inquiry by First Union Bank card collections that took
24 place on that date.

25 Q Okay. Did First Union ever have any

1 authorization from Ms. Bach to make that particular
2 inquiry?

3 A No.

4 Q And then if we could look at the next page,
5 middle of the page, right-hand column, it says, FUNB,
6 and then it has a date of 5/18/99.

7 A Yes, I see that.

8 Q Okay. And is that First -- First Union agrees
9 that that's probably the credit check that they did
10 before issuing the credit card?

11 A For certain, I don't know, but it's -- it's
12 quite possible. It's around the -- it's around the
13 opening date.

14 Q Do you know of any authorization that Ms. Bach
15 gave First Union to pull that credit report?

16 A No.

17 Q If we could take a look at the next credit
18 scope report, dated October 19th. Mark that as Exhibit
19 M.

20 A Okay.

21 (Plaintiff's Exhibit M was marked for
22 identification.)

23 Q We have -- this is, basically, just taken
24 about two weeks after the first one, would you agree?

25 A Yes. The first one was dated 10/3, this one's

1 dated 10/19.

2 Q And do you have any reason to dispute that the
3 information that's contained on here dealing with First
4 Union is what First Union reported to the credit
5 bureau?

6 A I have no reason to dispute it.

7 Q If we could take a look at Exhibit -- it'll be
8 Exhibit N, which is the residential mortgage credit
9 report.

10 A Okay.

11 (Plaintiff's Exhibit N was marked for
12 identification.)

13 Q The legal size document, do you see that?

14 A Yes, I have it.

15 Q It's dated March 20th, 2001.

16 A Correct.

17 Q This -- the second page of that exhibit has a
18 First Union entry towards the middle of the page, do
19 you see that?

20 A Yes. The first entry you're referring to?

21 Q Correct.

22 A Okay.

23 Q It says, Charge-off.

24 A Yes.

25 Q Okay. Now, does this relate to the checking

1 account?

2 A It looks like that's the checking account
3 number.

4 Q Okay. Now, do you know who Kelly is that has
5 this phone number here?

6 A I do not.

7 Q The -- the third page of that exhibit --

8 A Yes, I see it.

9 Q Okay. Do you see the FUNB-DB entry?

10 A Yes, I do.

11 Q Okay. And it says, Date reported is March of
12 2001.

13 A Correct.

14 Q Okay. And this is saying that it's -- it's a
15 charged-off account?

16 A Yes, it is.

17 Q So at least as late of March of 2001, First
18 Union is still reporting to the credit bureaus that
19 Ms. Bach has a charged-off account?

20 A Correct.

21 Q And a charged-off account is another way of
22 basically saying that she has a bad debt?

23 A Yes.

24 Q Okay. If we could look at the Trans Union
25 file report dated June 6th of 2001.

1 A Yes.

2 Q Can we mark that as Exhibit O, please?

3 A Done.

4 (Plaintiff's Exhibit O was marked for
5 identification.)

6 Q Okay. And -- and this one says, at least in
7 the middle, that, The FUNB-DB account information was
8 deleted.

9 A Correct.

10 Q Okay. Is that something that First Union
11 requested?

12 A I do not know.

13 Q And who would know that?

14 A That is a good question. It could be customer
15 service. I just simply -- I mean, obviously, it's
16 deleted, but I don't know who at First Union would have
17 requested that to be deleted, if, indeed, we did.

18 Q Okay. And then at the bottom of that little
19 list there, it says, FUNB recovery is deleted?

20 A Correct.

21 Q Okay. And then this -- at least as of June of
22 2001, the Trans Union's credit file, First Union's
23 information was deleted?

24 A Correct.

25 Q Did First Union at any time object to the

1 deletion of information regarding Ms. Bach?

2 A Not that I know of.

3 Q Does First Union dispute that prior to June
4 6th of 2001 it requested Trans Union to delete the
5 information regarding Ms. Bach?

6 A Repeat that, please.

7 Q Sure. Does First Union dispute that at some
8 time prior to June 6th of 2001 that it requested Trans
9 Union to remove the information regarding Ms. Bach?

10 A I can't dispute that. I just simply don't
11 know who would have made that request.

12 Q Her deposition didn't occur until after June
13 6th of 2001; isn't that true?

14 A To be honest, I don't know the date of her
15 deposition.

16 Q If you could take a look, there's a -- there's
17 a printout from First Union's website I'd like to mark
18 as Exhibit P.

19 A Hold on one second, let me get that.

20 Q It's entitled Corporate Overview.

21 A Okay. I have it.

22 (Plaintiff's Exhibit P was marked for
23 identification.)

24 Q Okay. Does First Union agree this is a
25 printout from their website?

1 A It appears to be, yes.

2 Q Okay. And you would agree, at least at this
3 -- the time of this printout, that First Union was
4 holding itself out as the nation's sixth largest
5 banking company?

6 A That's what the website says, yes.

7 Q Do you -- do you have any information to
8 dispute that?

9 A No.

10 Q Okay. Then it had assets of 254 billion at
11 December 3rd of 2000?

12 A Correct.

13 Q You don't have any information to disagree
14 with that?

15 A No.

16 Q Do you know what -- what -- strike that.

17 Do you know that Ms. Bach also had an account
18 established in her name without her permission with
19 American Express?

20 A I think I saw something in the file that you
21 sent me to that effect. But prior to that, I -- I did
22 not know that.

23 Q Okay. If you could take a look at -- there's
24 a set of documents that I provided to you dated October
25 22nd of 1999. It says -- addressed to American

1 Express, do you see that?

2 A Yeah, let me look through them. Okay. Yeah,
3 I see the document.

4 Q Okay. Can we mark that as Exhibit Q?

5 A Okay.

6 (Plaintiff's Exhibit Q was marked for
7 identification.)

8 Q It appears, at least based on this document,
9 that the first one is dated October 22nd, 1999?

10 A Yes.

11 Q And then the -- the last document is dated
12 December 15th, 1999?

13 A Correct.

14 Q And the second paragraph in that document
15 says, We are pleased to advise you that we've
16 instructed the credit reporting agencies listed below
17 to delete all information pertaining to this account as
18 it is erroneously included on your credit report.

19 A Yes.

20 Q Do you see that?

21 A Yes, I do.

22 Q Okay. Can you tell me what the industry
23 standard is as far as correcting errors on people's
24 credit reports and what information is necessary before
25 you're able to do that?

1 A To the best of my knowledge, under the FCRA, I
2 believe we have either 20 or 30 days to review a credit
3 dispute once we receive notification from the credit
4 bureaus. As far as what goes into the review process,
5 I believe that -- that pretty much every institution
6 has -- you know, has different -- different policies
7 and procedures as to what they look at as far as
8 verification.

9 Q Okay. And would it surprise you if -- if you
10 found out that she had this same type of dispute with
11 American Express and it got resolved in less than two
12 months?

13 A Would it surprise me? No.

14 Q Okay. And would it surprise you that American
15 Express doesn't require an affidavit implicating the
16 person who opened the account?

17 A It wouldn't surprise me.

18 Q You said it would not?

19 A Yeah. It would not surprise me.

20 Q We're getting real close here. Appreciate
21 your patience.

22 A Not a problem.

23 Q Also, finally, I guess the final exhibit would
24 be the request for admissions that you have in front of
25 you.

1 A Okay.

2 Q Do you see that?

3 A Yes, I do.

4 Q Okay. If you could take a look at -- well,
5 mark that Exhibit R first.

6 A Okay.

7 (Plaintiff's Exhibit R was marked for
8 identification.)

9 Q Take a look at request for admission
10 number 4.

11 A Yes.

12 Q It says, Dorothy B. Bach never authorized
13 anyone to open any account with any of the defendants.
14 And First Union has responded, First Union is unable to
15 admit or deny. Has First Union ever had any knowledge
16 whether or not Ms. Bach authorized anyone to open up
17 any of the accounts with First Union?

18 A No, we don't have any knowledge that she
19 authorized, but we also don't have any knowledge that
20 she didn't authorize.

21 Q Okay. In short, First Union never knew?

22 A Correct.

23 Q And you never knew if -- First Union never
24 knew if she even opened up any accounts with First
25 Union?

1 A Correct.

2 Q At this point in time does First Union contend
3 that Ms. Bach owes them money pertaining to the
4 checking account?

5 A I don't think that at this point in time we'll
6 hold her liable for that checking account, no.

7 Q Has First Union ever thought that she was
8 responsible for the monies owed on the checking
9 account?

10 A I did not work that checking account, so I
11 don't know, you know, what the work process is on it.
12 I really can't answer that. Are you still there?

13 Q Yeah, I'm still here. The more pauses I take,
14 the sooner we're close to being done.

15 MR. ECKERT: Okay. Mr. Durand, that's all the
16 questions I have for you right now. I do
17 appreciate your cooperation in getting this set up
18 and everything, it's made it a lot easier and I
19 know you didn't have to travel, so that's a help
20 out to you.

21 THE WITNESS: Oh, absolutely.

22 MR. ECKERT: I may have some questions
23 regarding the ones I posed to you that you were
24 unable to answer, which I can talk to John about,
25 about the collection and the fraud questions, but I

1 do appreciate your time. And the court reporter
2 can advise you on your right to sign and review the
3 transcript.

4 MR. DEAL: Mike, would you -- would you follow
5 up with a letter? There are two or three or four
6 items where we talked about getting some documents
7 or going back, would you follow that up with a
8 letter so we could make sure we've got everything
9 you're asking for?

10 MR. ECKERT: Yeah, I'd be glad to. I may not
11 have had a running tally, but I'd like to order the
12 deposition. And as soon as I get that, I'll be
13 glad to do that.

14 MR. DEAL: Okay. As long as you're ordering
15 it, we, of course, would like a copy. I don't know
16 what the timing is, but I think we've got a -- like
17 a first of the month deadline to move for summary
18 judgment, so I'd like to make sure we get the
19 transcript not later than -- gees, this is the 9th,
20 would we be able to have that by the 21st?

21 THE REPORTER: Yes.

22 (Witness excused.)

23 (The deposition was concluded at 4:52 p.m.)
24
25

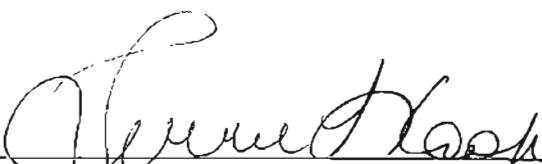
CERTIFICATE OF OATH

STATE OF FLORIDA)

COUNTY OF DUVAL)

I, the undersigned authority, certify that
FERNANDO DURAND personally appeared before me and was
duly sworn.

WITNESS my hand and official seal this 16th
day of January, 2002.


Terrie L. Cook, RPR, CRR, CSR (GA)
Notary Public-State of Florida
B-2192 - Expires 3/31/02



REPORTER'S CERTIFICATE


STATE OF FLORIDA

COUNTY OF DUVAL

I, Terrie L. Cook, RPR, CRR, CSR (GA), certify that I was authorized to and did stenographically report the deposition of FERNANDO DURAND; that a review of the transcript was requested; and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 16th day of January, 2002.


Terrie L. Cook, RPR, CRR, CSR (GA)

E R R A T A S H E E T

STATE OF FLORIDA

COUNTY OF DUVAL

I, FERNANDO DURAND, the undersigned deponent, have this date read the foregoing pages of my deposition, numbered 1 through 131, and with the suggestions noted below, if any, these constitute a true and accurate transcription of my deposition given on the 9th day of January, 2002, at the time and place stated therein.

PAGE NUMBER	LINE NUMBER	SUGGESTION/REASON
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FERNANDO DURAND

cc: tlc